

AUG 24 1976

MICHAEL ROBAK, JR., CLERK

APPENDIX

IN THE
Supreme Court of the United States
OCTOBER TERM, 1975

No. 75-1397

JOSEPH JUDICE, Individually and in his capacity as Judge
of the Dutchess County Court, RAYMOND E. ALDRICH, JR.,
Individually and in his capacity as a Judge of the
Dutchess County Court,

Appellants,

against

HARRY VAIL, JR., et al.,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

Jurisdictional Statement
Filed April 2, 1976

Probable Jurisdiction Noted
June 21, 1976

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<i>Date</i>	<i>Proceedings</i>
10-30-74	Filed complaint and issued summons.
10-30-74	Filed order to show cause for an order determining this action may proceed as a class action . . . etc., Weinfeld, J. (Returnable November 16, 1974)
11- 4-74	Filed memorandum endorsed on Show Cause Order of 10-30-74. The within motion for preliminary injunction is referred to the Judge sitting in Part I on 11-6-74 . . . So Ordered MacMahon, J.
11- 6-74	Filed plaintiff's memorandum of law in support of application for Temporary Restraining Order and the convening of a three-judge court.
11- 6-74	Filed plaintiff's memorandum of law in support of motion for Temporary Restraining Order and preliminary injunction.
11- 6-74	Filed memorandum endorsed on Show Cause Order of 10-30-74. Application for temporary restraining order granted as to plaintiff Ward only. Irresponsible (sic) damage by the threat of immediate incarceration having been shown. See findings on Record. Submit an order in conformity with § 2284(3) . . . (Cannella, J.) m/n
11-11-74	Filed Temporary Restraining Order that defendants, their successors, agents . . . are temporarily restrained pursuant to 28 U.S.C. 2284(3), from arresting and imprisoning plaintiff Ward.

Relevant Docket Entries—74 Civ. 4773 United States District Court, Southern District of New York, Harry Vail, Jr., et al. v. Lawrence M. Quinlan, et al.

<i>Date</i>	<i>Proceedings</i>
11-11-74	Pursuant to New York State Judiciary Law Article 19, until a hearing and determination is made by the full three-judge district court or until this court revokes the Temporary Restraining Order . . . dated 4 P.M. November 8, 1974 . . . Cannella, J. m/n
11-22-74	Filed defendants (Juidice & Aldrich) memorandum of law in opposition to convening three-judge court.
1-14-75	Filed memorandum of law (plaintiff's) in support of motion for convening a three-judge court.
1-21-75	Filed plaintiff's order to show cause for preliminary injunction and temporary restraining order by a three-judge court . . . Returnable 1-27-75. Griesa, J.
1-21-75	Filed plaintiff's order to show cause for preliminary injunction, temporary restraining order and intervention by a three-judge court . . . Returnable 1-27-75. Griesa, J.
1-28-75	Filed affidavit of Charles P. Morrow in opposition to order to show cause.
1-28-75	Filed memorandum endorsed on show cause order filed 1-21-75. Motion granted, no opposition temporary restraining order pursuant to 28 U.S.C. § 2284(3) is hereby continued pending hearing on application for preliminary injunction and determination thereof upon the findings of Judge Griesa's order of 1-2-75. So ordered—Cannella, J. (m/n)

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<i>Date</i>	<i>Proceedings</i>
1-28-75	Filed memorandum endorsed on order to show cause, etc. and intervention filed 1-21-75. Motion to intervene and add parties defendant granted, no opposition. Temporary restraining order pursuant to 28 U.S.C. § 2284(3) is hereby continued pending hearing and determination of application for preliminary injunction by three-judge court upon findings in Judge Griesa's order of 1-8-75. So ordered Cannella, J. (m/n).
2-13-75	Filed notice of motion to amend affidavits of Leslie Nameth and McKinley Humes . . . Returnable 2-24-75.
2-20-75	Filed order designating . . . three-judge court—Kaufman, Ch. C.J.
2-21-75	Filed plaintiff's notice of motion for an order to intervene Richard Russell, Jr., Helen Thorpe and Robert Harrell as named party plaintiffs and to add as party defendants Alexander Paulsen and Douglas Paulson, d/b/a Hudson View Part Co. and Dr. George T. C. Way, M.D. and Herbert H. Redl, d/b/a H. H. Redl's Auto Body Works. Returnable 2-28-75.
2-26-75	Filed defendants etc. and George Montgomery, Jr., M.D. affidavit of Thomas A. Reed in opposition to motion to intervene and motion for a preliminary injunction.
3-10-75	Filed answer of defendant Public Loan Co., Inc. to the complaint.

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<i>Date</i>	<i>Proceedings</i>
3-19-75	Filed plaintiff's memorandum of law.
3-20-75	Filed answer of defendant Herbert H. Redl, et. to complaint.
3-31-75	Filed memorandum on behalf of defendant Quinlan in support of motion to dismiss plaintiff's claims for damages for false imprisonment.
3-31-75	Filed answer of defendant Lawrence M. Quinlan to the complaint.
4- 3-75	Filed answer of defendant George Montgomery, Jr., M.D. to the complaint.
4-14-75	Filed defendants Juidice, Aldrich, Grady and Louis J. Lefkowitz, Pro Se memorandum of law in support of motion to dismiss.
4-22-75	Filed plaintiff's reply brief.
5- 7-75	Filed order that plaintiffs are authorized to proceed in forma pauperis. Cannella, J.
1- 7-76	Filed Opinion #43671 and Order . . . under the Due Process clause of the Fourteenth Amendment, we declare unconstitutional and enjoin further application, of Sections 756, 757, 770, 772, 773, 774 and 775 of Article 19 of the New York Judiciary Law. So order Lumbard, C.J., MacMahon, D.J. and Cannella, D.J. (m/n).
1- 7-76	Filed memorandum-decision #43674. Plaintiff's motion for class determination is granted. The class shall consist of all persons who have

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<i>Date</i>	<i>Proceedings</i>
	been, or are presently subject to the civil contempt proceedings contained in the challenged sections of the Judiciary Law. So ordered MacMahon, J. m/n.
1-19-76	Filed defendant's affidavit and show cause order to stay order of the court for 60 days or until further order of the Supreme Court of the United States. Returnable 1-15-76.
1-23-76	Filed order of (three-judge court) that partial summary judgment is granted in favor of plaintiffs, declaring that Sections 756, 757, 770, 773, 774, 775 of the Judiciary Law of New York State are unconstitutional on their face and permanently enjoining the operation of said statutes against plaintiffs and members of their class, as indicate ORDERED AND ADJUDGED that this Court's prior order of 1-7-76 is so modified, and that defendant's application for a stay is in all respects denied. Lumbard, J., MacMahon, J. & Cannella, J. Judgment entered 1-23-76.
1-28-76	Filed defendant's supplemental affidavit in support of the pending resettling of the order to show cause of 1-14-76, and the argument before the three-judge court on 1-17-76.
2- 6-76	Filed defendants appellants Juidice and Aldrich and pro se pursuant to Executive Law § 71, notice of appeal to the Supreme Court from a declaration of unconstitutionality and injunction against the operation of certain New York Judiciary Laws.

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<i>Date</i>	<i>Proceedings</i>
3- 4-76	Filed order from Supreme Court of the United States that the judgment of the United States District Court entered 1-28-76 is stayed pending the timely docketing of an appeal, etc. . . . Thurgood Marshall, Associate Justice of the Supreme Court of the United States.
4- 9-76	Filed Certificate from the Supreme Court of the United States that an appeal was filed on 4-2-76, and that the case has been docketed #75-1397, and is now pending . . . Clerk.
6- 2-76	Filed order transferring this action with all filed papers with a certified copy of his order, to the Supreme Court of the United States MacMahon, J. n/m.
6- 3-76	Filed notice that original record has been certified and transmitted to the United States Supreme Court by certified mail.
6-29-76	Filed true copy of order from Supreme Court of the United States. The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted 6-21-76 Clerk, United States Supreme Court m/n.

Complaint—Class Action.

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

74 Civ. 4773 (Judge MacMahon)

**HARRY VAIL, JR., PATRICK WARD, and RICHARD McNAIR, on
behalf of themselves and all other persons similarly
situated,**

Plaintiffs,

against

**LAWRENCE M. QUINLAN, individually and in his capacity as
Sheriff of Dutchess County, JOSEPH JUDICE, individually
and in his capacity as a Judge of the Dutchess County
Court, RAYMOND E. ALDRICH, JR., individually and in his
capacity as Judge of the Dutchess County Court, and
PUBLIC LOAN COMPANY, INC., ARNOLD GORAN, M.D., P.C.,
and GEORGE MONTGOMERY, JR., M.D.,**

Defendants.

I.

PRELIMINARY STATEMENT

1. Plaintiffs, individually and on behalf of all other persons similarly situated, seek to have this Court declare invalid and enjoin the enforcement of New York State Statutes, Judiciary Law Article 19, Sections 756, 757, 765, 767, 769, 770, 771, 772, 773, 774, and 775 (hereinafter Sections 756 etc.).

These sections of the Judiciary Law provide for the imposition of a fine and imprisonment of "contumacious" judgment debtors and the seizure of property without due

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process or the right to counsel in violation of the Fourth, Fifth and Fourteenth Amendments of the Constitution of the United States. Furthermore, they deny the judgment debtor equal protection of the laws and subject the judgment debtor to cruel and unusual punishment in violation of the Fifth, Eighth, and Fourteenth Amendments of the Constitution of the United States.

The statute creates a series of *ex parte* steps that can cause an individual to be indefinitely imprisoned and fined without ever appearing before a judge. A person can be imprisoned solely upon two affidavits of the attorney for one interested party and a process server. Moreover, the statute's full force is almost always applied only to the very poor.

2. Plaintiffs Vail and McNair also seek damages for the wrongful imposition of imprisonment and fine pursuant to the above sections of the New York State Judiciary Law in violation of their Constitutional rights.

3. Plaintiff Ward also seeks a temporary restraining order and preliminary injunction against enforcement of New York State Judiciary Law, Sections 756, etc., to prevent his imminent imprisonment the first week of November, 1974.

II.

JURISDICTION

4. Jurisdiction is conferred on this Court by 28 U.S.C. Section 1343 (3), (4) which provides for original jurisdiction of this Court in all suits authorized by 42 U.S.C. Section 1983 to redress the deprivation under color of state law of any right, privilege, or immunity secured by the Constitution of the United States or by an Act of Congress

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providing for equal rights or civil rights of all persons within the jurisdiction of the United States and 28 U.S.C. 1331 as the matter in controversy exceeds \$10,000 and arises under the Constitution of the United States.

5. Plaintiffs' action for declaratory and injunctive relief is authorized by 28 U.S.C. Section 2201, 2202 and Rule 57 of the Federal Rules of Civil Procedure.

III.

THREE-JUDGE COURT

6. This is a proper case for determination by a three-judge court pursuant to 28 U.S.C. Section 2281, 2284, since plaintiffs seek an injunction to restrain defendants, who are state officers, from the enforcement, operation, and execution of state statutes (New York State Judiciary Law, Sections 756, etc.) of state-wide applicability on the ground that said statutes are contrary to the Constitution of the United States.

IV.

PLAINTIFFS

7. Plaintiff Harry Vail, Jr. is a citizen of the United States and the State of New York and presently resides at 541 Main Street, Poughkeepsie, New York, with his wife and two infant children. Plaintiff Vail and his family are indigent and receive public assistance from the Dutchess County Department of Social Services.

8. Plaintiff Patrick Ward is a citizen of the United States and the State of New York and presently resides at 94 Washington Street, Poughkeepsie, New York. Plaintiff Ward is unemployed and supports himself on unem-

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ployment insurance benefits in the sum of \$61.00 a week, of which \$30.00 is paid to his divorced wife for the support of his wife and their child.

9. Plaintiff Richard McNair is a citizen of the United States and the State of New York and presently resides at 241 Smith Street, Apt. 9-A-5, Poughkeepsie, New York, with his wife and three children. Plaintiff McNair is unemployed. Plaintiff McNair's wife, Virginia McNair, is employed and earns \$90 per week.

V.

CLASS ACTION ALLEGATIONS

10. Plaintiffs Vail, Ward, and McNair bring this action on their own behalf and pursuant to Rule 23(a), (b) (2) of the Federal Rules of Civil Procedure, on behalf of all other persons similarly situated. The class represented by Plaintiffs Vail, Ward, and McNair consist of all persons who are subject to and/or have been subjected to civil contempt proceedings pursuant to Article 19 of the New York State Judiciary Law which sets forth civil contempt procedures denying the plaintiffs and the class they represent rights protected by the Fourth, Fifth, Eighth, and Fourteenth Amendments to the United States Constitution.

11. The class of plaintiffs set forth in paragraph 10 is so numerous that joinder of all the members is impractical. In the past twelve months there have been approximately 500 persons who have been subject to or have been subjected to civil contempt proceedings set forth in New York State Judiciary Law, Section 756, etc., in Dutchess County. There are questions of law and fact common to the class, namely, the imposition of a fine and/or imprisonment in

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civil contempt proceedings pursuant to New York State Judiciary Law, Section 756, etc., in violation of the Fourth, Fifth, Eighth and Fourteenth Amendments to the United States Constitution. The claims of the representative parties are typical of the claims of the class. The Mid-Hudson Valley Legal Services Project (Monroe County Legal Assistance Corporation), attorneys for the plaintiffs will fairly and adequately protect the interests of the class. In subjecting plaintiffs to civil contempt proceedings in violation of the Fourth, Fifth, Eighth and Fourteenth Amendments to the United States Constitution, the Defendants have acted on grounds generally applicable to the class, thereby making appropriate final injunctive and declaratory relief with respect to the class as a whole.

VI.

DEFENDANTS

12. Defendant Lawrence M. Quinlan is the Sheriff of Dutchess County, State of New York. As such, he has the duty pursuant to New York State Statutes, Judiciary Law, Article 19, Sections 765, 767, 769, 770, 771, 772, 773, 774, and 775 to execute commitment orders and to incarcerate contumacious debtors in the Dutchess County Jail. He is a resident of the State of New York, and a citizen of the United States.

13. Defendants Joseph Juidice and Raymond E. Aldrich, Jr. are Judges of the Dutchess County Court, located at 10 Market Street, Poughkeepsie, New York. As such, they have the authority pursuant to New York State Statutes, Judiciary Law, Article A, Sections 754, 756, 757, 765, 767, 769, 770, 771, 772, 773, 774, and 775 to issue orders of contempt, warrants of attachment and commitment. Defend-

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ants Juidice and Aldrich are residents of the State of New York and citizens of the United States.

14. Upon information and belief, defendant Public Loan Company, Inc. (hereinafter, Public Loan), is a small loan company incorporated pursuant to the New York State Banking Law with offices located at 2 Catherine Street, Poughkeepsie, New York.

15. Upon information and belief, defendant Arnold Goran, M.D., P.C. (hereinafter Goran) is a professional corporation incorporated pursuant to the laws of the State of New York, with offices located at 74 West Cedar Street, Poughkeepsie, New York.

16. Defendant George Montgomery, Jr., M.D. is a citizen of the United States and the State of New York with offices located at 34 Livingston Road, Poughkeepsie, New York.

VIII.

FACTUAL ALLEGATIONS

A. PLAINTIFF VAIL

17. Over five years ago, defendant Vail and his wife, Charlene entered into an "open ended" credit agreement with Public Loan pursuant to which, from time to time, the Vails would purchase items of personal property, the last purchase occurring approximately four years ago. This credit arrangement provided that the Vails would reduce the loan balance by making payments of approximately \$20.00 a month.

18. Plaintiff Vail had made periodic payments pursuant to the agreement until January, 1974, at which time he was

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no longer employed and forced to seek public assistance from the Dutchess County Department of Social Services to support his family. Plaintiff Vail and his family have received monthly public assistance allotments of approximately \$378.00 from January, 1974 to present time, which is not subject to attachment or levy pursuant to the laws of the State of New York. Plaintiff Vail also remains unemployed at the present time.

19. On January 7, 1974, the Public Loan Company served a summons on the plaintiff Vail for money owed pursuant to the credit agreement.

20. On January 23, 1974, a default judgment was entered in City Court of the City of Poughkeepsie, New York, in favor of Public Loan Company, Inc. against Plaintiff Harry Vail, Jr. and Charlene Vail for \$534.63.

21. On April 22, 1974, Charles P. Morrow, attorney for Public Loan allegedly caused to be served a subpoena duces tecum, requiring the plaintiff, Harry Vail, Jr. to appear on May 28, 1974 before Charles P. Morrow at 40 Cannon Street, Poughkeepsie, New York for the taking of a deposition regarding all matters relevant to the satisfaction of the judgment of January 23, 1974 and to produce certain records.

22. On July 22, 1974, after Plaintiff Vail's noncompliance with the subpoena, defendant Juidice issued an Order to Show Cause, ordering Plaintiff Vail to appear at the Dutchess County Court on August 13, 1974 at 9:30 A.M. to "show cause why he should not be punished as for contempt for violation of and noncompliance with the said subpoena in that he failed to appear or respond pursuant thereto . . ."

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23. Defendant Juidice issued this Order to Show Cause pursuant to Judiciary Law, Article 19, Section 757 (1) which provides that the Court may commence civil contempt proceedings by making

(1) . . . an order, requiring the accused to show cause before it or him, at a time and place therein specified, why the accused should not be punished for the alleged offense; or

(2) Issue a warrant of attachment, directed to the sheriff of a particular county, or, generally, to the sheriff of any county where the accused may be found, commanding him to arrest the accused, and bring him before the court or judge, either forthwith, or at a time and place therein specified, to answer for the alleged offense.

A copy of this Order to Show Cause was served on the Plaintiff Vail on July 24, 1974.

24. When Plaintiff Vail failed to appear in County Court on August 13, 1974, defendant Juidice, on August 30, 1974, issued an Order Imposing Fine which held Plaintiff Vail in contempt and further ordered that "for such contempt the sum of \$250.00 together with \$20.00 costs of these proceedings making a total of \$270.00 to be paid to the judgment creditor . . . in installments of \$10 commencing on week received this order" . . . (emphasis supplied).

25. Defendant Juidice issued the order imposing fine pursuant to Judiciary Law Section 770 which provides that:

"If it is determined that the accused has committed the offense charged; and that it was calculated to, or actually did, defeat, impair, impede or prejudice

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the rights or remedies of a party to an action or special proceeding brought in the court, or before the judge or referee; the court, judge, or referee must make a final order directing that he be punished by fine or imprisonment or both as the nature of the case requires. A warrant of commitment must issue accordingly;" . . .

26. Defendant Juidice issued the Order Imposing Fine based upon the affirmation of Charles P. Morrow, attorney for defendant Public Loan and the affidavit of Virginia Traver, the individual who served Plaintiff Vail with a copy of the Order to Show Cause. Upon information and belief, the affirmation of Charles P. Morrow stated that Plaintiff Vail failed to comply with a Subpoena Duces Tecum requiring the production of records for examination which did defeat, impair, impede, and prejudice the rights of the defendant Public Loan. In the Order Imposing Fine, the defendant Juidice fined plaintiff Vail \$250 plus \$20 costs pursuant to Judiciary Law Section 773. Section 773 provides as follows:

"If an actual loss or injury has been produced to a party to an action or special proceeding, by reason of the misconduct proved against the offender, and the case is not one where it is specially prescribed by law, that an action may be maintained to recover damages for the loss or injury, a fine, sufficient to indemnify the aggrieved party, must be imposed upon the offender and collected, and paid over to the aggrieved party, under the direction of the court. The payment and acceptance of such a fine constitute a bar to an action by the aggrieved party, to recover damages for the loss or injury. Where it is not shown that such an actual loss or injury has been produced, a fine must be imposed, not exceeding the amount of

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the complainant's costs and expenses, and two hundred and fifty dollars in addition thereto, and must be collected and paid, in like manner. A corporation may be fined as prescribed in this section."

27. A copy of this Order Imposing Fine was served on plaintiff Vail on September 4, 1974.

28. In the latter part of August, 1974, plaintiff Vail informed Public Loan that he was unable to make payment on his indebtedness to Public Loan due to his indigency and an employee of Public Loan informed Vail that if he made a payment of \$5.00 "he would not have to appear in Court". Pursuant to this conversation, plaintiff Vail delivered \$5.00 to Public Loan.

29. When Plaintiff Vail failed to comply with the Order Imposing Fine, Defendant Juidice issued an *ex parte* Commitment Order on September 23, 1974, which ordered as follows:

"That without further notice to said Harry Vail, Jr., the Sheriff of any County within the State of New York—wherein he may be apprehended shall forthwith arrest him without further process, and commit him to the County Jail of said County and hold him in close custody until he shall have paid said fine of \$270 together with said Sheriff's fees and the disbursements on the execution of this order, or is discharged according to law."

30. Defendant Juidice issued the Commitment Order based upon:

"The subpoena dated April 19th, 1974, which directed Harry Vail, Jr. to appear and answer for examination and supplementary proceedings. The affidavit of

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Virginia Traver, verified April 23rd, 1974, showing due service thereof, the order to show cause why Harry Vail, Jr. should not be punished for contempt of court, dated July 22, 1974, the affirmation of Charles P. Morrow, Esq., dated July 19th, 1974, in support of said order; the affidavit of Virginia Traver, dated July 24, 1974, showing due service of a certified copy of said order to show cause, and on reading and filing the order entered herein on August 30th, 1974, fining the said the sum of \$270 and directing the payment of said fine in installments of \$10 each commencing on September 9th, 1974 and on reading and filing the affidavit of George Traver verified September 4th, 1974 showing the service of a certified copy of said order with notice of entry thereof on said Harry Vail, Jr., and AFFIDAVIT OF NON-COMPLIANCE dated September 16th, 1974 showing that said order has not been complied with.

31. Defendant Juidice issued the commitment order pursuant to Judiciary Law Article 19, Section 756 which provides as follows:

"Where the offense consists of a neglect or a refusal to obey an order of the court, requiring the payment of costs, or of a specified sum of money, and the court is satisfied, by proof, by affidavit, that a personal demand thereof has been made, and that payment thereof has been refused or neglected; it may issue, without notice, a warrant to commit the offender to prison, until the costs or other sum of money, and the costs and expenses of the proceeding are paid, or until he is discharged according to law."

32. On October 1, 1974, deputies of defendant Quinlan went to plaintiff Vail's home and arrested him pursuant

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to the Commitment Order and then committed him to the Dutchess County Jail.

33. The deputies of defendant Quinlan arrested and held plaintiff Vail in the Dutchess County Jail pursuant to Judiciary Law Sections 756 and 774. Section 774 provides as follows:

"1. Where the misconduct proved consists of an omission to perform an act or duty, which is yet in the power of the offender to perform, he shall be imprisoned only until he has performed it, and paid the fine imposed, but if he shall perform the act or duty required to be performed, he shall not be imprisoned for the fine imposed more than three months if the fine is less than five hundred dollars, or more than six months if the fine is five hundred dollars or more."

34. Plaintiff Vail had one dollar remaining at the time of his arrest and no access to additional resources until he received his public assistance check for the month of October, 1974. He and his family own no property of value other than household furniture and clothing.

35. On October 2, 1974, the plaintiff was released from Dutchess County Jail pursuant to Judiciary Law Section 774, after a relative lent him funds to pay the fine totalling \$294.25. This debt has remained unpaid due to his indigency.

36. Plaintiff Vail was charged \$250.00 for the fine, \$20.00 for costs, \$7.50 for service fees, \$1.00 for mileage fees, \$13.50 for poundage, \$.25 for an affidavit and \$2.00 for C. & D.

37. The sum of \$294.25 was delivered to a deputy of defendant Quinlan who, upon information and belief, deliv-

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ered the money to defendant Public Loan pursuant to Section 773 of the Judiciary Law.

38. By virtue of the foregoing, plaintiff Vail was wrongfully imprisoned for approximately 24 hours, suffered mental anguish, shame and humiliation, damage to his character and reputation, damage to his credit standing, and was wrongfully deprived of \$294.25 in violation of his Fifth, Eighth, and Fourteenth Amendment rights to the United States Constitution.

39. Plaintiff Vail was deprived of his liberty and his property in the amount of the \$294.25 fine without being brought before the Court prior to incarceration to answer to defendant Public Loan's charges or to plead his indigency in violation of his due process rights under the Fifth, and Fourteenth Amendments to the United States Constitution.

40. At no time during the course of the civil contempt proceedings was the plaintiff Vail apprised of his right to counsel in these proceedings nor is there any provision pursuant to Article 19 of the Judiciary Law for the appointment of counsel for indigent persons faced with the imminent danger of imprisonment in violation of the Fifth and Fourteenth Amendments to the United States Constitution.

41. Pursuant to the commitment order, plaintiff Vail was deprived of liberty because of his indigency. This deprivation of liberty constitutes a violation of his rights under the Equal Protection clause of the Fourteenth Amendment to the United States Constitution by subjecting plaintiff Vail to arrest and imprisonment because of his inability to pay the fine while a person with the ability

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to pay the fine would not be subject to arrest or imprisonment.

42. Pursuant to the commitment order, plaintiff Vail was subjected to an indefinite term of imprisonment for the non-payment of a fine that he was financially unable to pay. Because the indefinite term of imprisonment is disproportionate to the alleged offense, it is in violation of the ban of the Eighth Amendment to the United States Constitution on the imposition of cruel and unusual punishments.

B. PLAINTIFF WARD

43. About September, 1973, plaintiff Ward's wife, Patricia, received medical services from defendant Goran and was charged \$125.00 for said services. At that time, plaintiff Ward and his wife were married.

44. On November 29, 1973, plaintiff Ward was served with a Summons with Notice commencing *Arnold Goran, M.D., P.C. v. Patrick Ward*, Index No. 1973/881D, in the Dutchess County Court, for services rendered in the amount of \$125.00, with interest and costs.

45. On December 26, 1973, a default judgment against plaintiff Ward was entered in the above-cited action for \$146.84.

46. On December 27, 1973, plaintiff Ward was served with a subpoena, issued by Jeffrey S. Graham, Esq. attorney for defendant Goran, requiring him to appear in person at the Dutchess County Courthouse to produce books and records and to be examined in connection with efforts to enforce the default judgment dated December 26, 1973. Plaintiff Ward appeared at the appointed time and place,

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however defendant Goran's attorney Jeffrey Graham did not appear. Mr. Graham was contacted by phone by an employee of the Court who, upon information and belief, informed Mr. Graham that plaintiff Ward had appeared as directed by the Subpoena. At that time, Mr. Graham spoke with plaintiff Ward on the phone and instructed him to come to Graham's office.

47. Plaintiff Ward went to Graham's office and was subjected to inquiries by Mr. Graham as to his salary, family size, and employment status. Believing the subpoena required production of books and records and examination to be made before the Dutchess County Court, plaintiff Ward refused to be examined in Mr. Graham's office but offered to present all material information before the Court. Then Mr. Graham directed plaintiff Ward to leave his office. Plaintiff Ward was not informed of any adjourned date on the subpoena.

48. On May 15, 1974, plaintiff Ward was served with a Notice of Motion for Order Finding Defendant in Contempt of Court ordering the plaintiff to appear in Dutchess County Court on May 28, 1974. This matter was adjourned once to July 16, 1974, and once to July 23, 1974.

49. In June, 1974, plaintiff Ward received a letter from Mr. Graham threatening court action if there was continued non-payment of the judgment. In response to Graham's letter, plaintiff Ward contacted Mr. Graham and arranged to satisfy the judgment by paying \$10.00 a week to Graham until full payment was made.

50. On July 4, 1974, plaintiff Ward was "laid off" from his job and shortly thereafter he notified Mr. Graham of this development and told him that he would be unable to make the \$10.00 payment according to their arrangement.

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51. On or about October 3, 1974, plaintiff Ward was served with an Order of Contempt, issued by defendant Aldrich on September 19, 1974, pursuant to Judiciary Law, Article 19, Section 770, finding plaintiff Ward in Contempt of Court because he "failed to produce certain records for an examination at a place named on the 11th day of January, 1974, and adjourned to the 25th day of February, 1974, as required by Subpoena Duces Tecum ..."

52. Defendant Aldrich's Order of Contempt subjects plaintiff Ward to a fine or imprisonment as follows:

ORDERED, that the said defendant Patrick Ward, as punishment for said Contempt of Court, be and hereby is fined the amount of \$250.00 and \$20.00 costs, the said amount when paid, with the exception of the costs, to be applied in reduction of the Judgment; and it is further

ORDERED, that the defendants may purge themselves of the aforesaid Contempt by paying to the plaintiff's attorney the sum of \$250.00 plus \$20.00 costs within thirty (30) days after the service upon the defendant of a certified copy of this Order with Notice of Entry thereof; and it is further,

ORDERED, that in the event that the defendant fails to purge himself of this Contempt, as provided herein, within the time specified the plaintiff may apply ex parte to this Court upon proof by affidavit of the defendant's failure to purge himself, as provided herein for an Order directing the sheriff of any County wherein the defendant may be found, to detain the defendant in close custody in the common or County jail of said County, until he shall have paid the entire fine imposed herein, or any part of such fine that re-

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mains unpaid at the time of said commitment, or until he shall have paid the entire fine imposed herein, or any part of such fine that remains unpaid at the time of said commitment, or until he shall have otherwise been discharged according to law.

53. Defendant Aldrich issued the Order of Contempt pursuant to Section 770 of Article 19 which provides that if the accused has committed the offense as charged "... he be punished by fine or imprisonment or both ..." and Section 773 provides for a fine not exceeding \$250.00 plus costs when the actual loss or injury to the aggrieved party is not shown and further provides that the fine shall be paid over to the aggrieved party.

54. At the present time, plaintiff Ward is unemployed and maintains himself on Unemployment Insurance Benefits of \$61 a week. He makes weekly support payments of \$30.00 to his wife and child. His rent is \$25.00 a week. He has no other funds available or possessions that could be used to pay the fine imposed.

55. As the Order of Contempt was served upon plaintiff Ward about October 3, 1974, plaintiff is in imminent danger of being imprisoned pursuant to the Order of Contempt because he is financially unable to pay the fine imposed.

56. Plaintiff Ward contends that the imposition of the fine and the punishment of imprisonment in the event the fine is unpaid is violative of his rights secured by the Fourth, Fifth, Eighth and Fourteenth Amendments to the United States Constitution.

57. With respect to the fine of \$250.00 plus \$20.00 costs, plaintiff Ward contends that defendant Aldrich

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wrongfully imposed the fine without affording him the procedural right to answer defendant Goran's charge of contempt or to challenge the amount of the fine imposed in violation of his right to due process secured by the Fifth and Fourteenth Amendments.

58. The fine imposed of \$250.00 plus costs pursuant to defendant Aldrich's Order of Contempt exceeds the default judgment of \$146.84 in the sum of \$103.16. Pursuant to Section 773 the entire \$250.00 plus costs is to be paid over to the defendant Goran. Plaintiff Ward contends that this procedure constitutes a wrongful taking of his \$103.16 in violation of the Fourth and Fourteenth Amendments.

59. Plaintiff Ward has not been apprised of his right to counsel in this proceeding nor is there any provision pursuant to Article 19 of the Judiciary Law for the appointment of counsel for indigent persons faced with the imminent danger of imprisonment in violation of the right to counsel secured by the Fifth and Fourteenth Amendments.

60. The punishment of imprisonment in the event the fine is unpaid is violative of the Equal Protection clause of the Fourteenth Amendment in that it works an invidious discrimination against those who are too poor to pay the fine. Plaintiff Ward is one who is indigent and unable to pay the fine and, as a result, he is faced with the imminent danger of imprisonment.

61. Plaintiff Ward contends that the imprisonment that may occur due to non-payment of the fine is in violation of the Eighth Amendment's ban upon cruel and unusual punishment in that the term of imprisonment is indefinite and disproportionate to the offense alleged.

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C. PLAINTIFF McNAIR

62. About May, 1967, plaintiff McNair's wife, Virginia McNair received medical services from defendant Montgomery, Jr., M.D. and was charged \$318.42 for said services.

63. Plaintiff McNair was served with a summons commencing *George Montgomery, Jr., M.D. v. Richard McNair and Virginia A. McNair*, Index No. 1973/906 in the City Court, City of Poughkeepsie, New York, for services rendered in the amount of \$318.42 with interest and costs.

64. On May 15, 1973, a default judgment against plaintiff McNair and Virginia A. McNair was entered in the above-cited action for \$362.42.

65. On May 29, 1973, Thomas A. Reed, Attorney for defendant Montgomery served by mail a subpoena duces tecum, requiring plaintiff McNair to appear on June 18, 1973, before a notary public at 75 Market Street, Poughkeepsie, New York for the taking of a deposition regarding all matters relevant to the satisfaction of the judgment of May 15, 1973, and to produce certain records.

66. When plaintiff McNair failed to appear on May 29, 1973, on June 21, 1973, defendant Judice issued an Order to Show Cause pursuant to Judiciary Law Article 19, Section 757(1) ordering plaintiff McNair to appear at the Dutchess County Court on July 10, 1973, at 10:00 a.m. to "show cause why he should not be punished as for contempt for violation of and non-compliance with the said subpoena in that he failed to appear or respond pursuant thereto . . ."

67. When Plaintiff McNair failed to appear on July 10, 1973, Plaintiff McNair was notified by mail that the

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hearing on the Order to Show Cause was adjourned to July 24, 1973, at 10:00 a.m.

68. When plaintiff McNair failed to appear in County Court on July 24, 1973, defendant Juidice issued an Order of Contempt on August 2, 1973, pursuant to Judiciary Law Article 19, Section 770 holding plaintiff McNair in contempt and ordering:

ORDERED that the said defendant Richard McNair for his misconduct and willful contempt be and he is hereby fined the sum of \$250.00 to be paid to the plaintiff, besides the sum of \$10.00 costs of this proceeding by paying said amount to Reed & Reed, Esqs., attorneys for the plaintiff, by making installment payments in the amount of Twenty (\$20.00) dollars per week, commencing one week after service of a certified copy of this order. Upon payment as aforesaid, the said defendant shall be deemed purged of his contempt, but in the event of his failure to pay as directed, said defendant be committed by the Sheriff of the County wherein he may be found in the County Jail of such County to remain retained there until he has paid the fine imposed as aforesaid, together with the costs and the sheriff's legal fees in connection therewith and that a warrant of commitment be issued accordingly without further notice.

69. Defendant Juidice issued the Order of Contempt based upon the following:

Upon reading and filing the Order to Show Cause dated the 21st day of June, 1973, with due proof of service thereof on the defendant, the affirmation of Thomas A. Reed dated the 20th day of June, 1973, and upon all the pleadings and proceedings heretofore

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had herein, and after hearing Reed & Reed, Esqs., Thomas A. Reed, of counsel, for the plaintiff in support of said motion, and there being no opposition there to.

70. A copy of this Order of Contempt was served on plaintiff McNair on January 17, 1974.

71. When plaintiff McNair failed to comply with the Order of Contempt, defendant Juidice issued an *ex parte* Commitment Order pursuant to Judiciary Law Article 19, Section 756 on January 31, 1974, which ordered as follows:

NOW THEREFORE, you are hereby commanded that you take the body of Richard McNair, and him closely and safely keep in your custody in the common jail of your county until he shall have paid the sum of \$250.00, the fine imposed as aforesaid, also the costs and expenses amounting to \$10.00, and your fees hereon, or until the said Richard McNair shall be sooner discharged by an order of the Court.

72. Defendant Juidice issued the Commitment Order based upon:

WHEREAS proof has been made to the undersigned that more than 7 days have elapsed since the service of said order with notice of entry thereof on said defendant and that said defendant has not paid the fine specified in said order; to wit: the sum of \$250.00 plus \$10.00 costs, or any part thereof.

73. On February 21, 1974, deputies of defendant Quinlan arrested Plaintiff McNair pursuant to the Commitment Order and committed him to the Dutchess County Jail pursuant to Judiciary Law Sections 756 and 774.

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74. Plaintiff McNair remained in Dutchess County Jail for five hours on February 21, 1974, until he paid the \$283.75 fine (\$250.00 fine, plus \$10.00 costs, plus fees) from rent money and money his wife borrowed from her credit union at work.

75. The sum of \$283.75 was delivered to a deputy of defendant Quinlan who, upon information and belief, delivered the money to defendant Montgomery pursuant to Section 773 of the Judiciary Law.

76. By virtue of the foregoing, plaintiff McNair was wrongfully imprisoned for approximately 5 hours, suffered mental anguish, shame and humiliation, damage to his character and reputation, damage to his credit standing, and was wrongfully deprived of \$283.75 in violation of his Fifth, Eighth, and Fourteenth Amendment rights to the United States Constitution.

77. Plaintiff McNair was deprived of his liberty and his property in the amount of \$283.75 fine without being brought before the court to answer defendant Montgomery's charges or to plead his indigency in violation of his due process rights under the Fifth, and Fourteenth Amendments to the United States Constitution.

78. At no time during the course of the civil contempt proceedings was the plaintiff McNair apprised of his right to counsel in these proceedings nor is there any provision pursuant to Article 19 of the Judiciary Law for the appointment of counsel for indigent persons faced with the imminent danger of imprisonment in violation of the Fifth and Fourteenth Amendments to the United States Constitution.

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79. Pursuant to the commitment order, plaintiff McNair was deprived of liberty because of his indigency. This deprivation of liberty constitutes a violation of his rights under the Equal Protection clause of the Fourteenth Amendment to the United States Constitution by subjecting plaintiff McNair to arrest and imprisonment because of his inability to pay the fine while a person with the ability to pay the fine would not be subject to arrest or imprisonment.

80. Pursuant to the commitment order, plaintiff McNair was subjected to an indefinite term of imprisonment for the nonpayment of a fine that he was financially unable to pay. Because the indefinite term of imprisonment is disproportionate to the alleged offense, it is in violation of the ban of the Eighth Amendment to the United States Constitution on the imposition of cruel and unusual punishments.

81. On April 16, 1974, Thomas A. Reed, attorney for defendant Montgomery issued a subpoena duces tecum requiring plaintiff McNair to appear on May 7, 1974, before a notary public at 75 Market Street, Poughkeepsie, New York, for the taking of a deposition regarding all matters relevant to the satisfaction of the judgment of May 15, 1974, and to produce certain records.

82. On July 12, 1974, Thomas A. Reed, attorney for defendant Montgomery issued an income execution which provides as follows:

"a transcript of the judgment was filed on May 22, 1973 with the Clerk of the County of Dutchess and the Judgment Debtor is receiving or will receive from Hudson River State Hospital whose address is North Road, Poughkeepsie, New York more than \$85.00 per

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week, to wit \$100.00 or more to be paid in weekly amounts of \$100.00 or more each:"

VIII.

FIRST CAUSE OF ACTION

83. Plaintiffs restate, reallege, and incorporate each and every allegation in paragraphs 1-82.

84. The Fifth and Fourteenth Amendments to the United States Constitution provide that no state shall "deprive any person of life, liberty, or property without due process of law".

85. New York Judiciary Law, Article 19, which authorizes the defendants who are acting under color of state law to commit and hold the plaintiffs in Dutchess County Jail is unconstitutional in that it has and shall deprive the plaintiffs and the class they represent of their liberty and property without due process of law guaranteed to them by the Fifth and Fourteenth Amendments to the United States Constitution by subjecting the plaintiffs to punishment by fine and/or imprisonment without affording the plaintiffs the right to counsel and an opportunity to be brought before the Court to challenge the fine and/or imprisonment, offer an explanation for the failure to appear on any prior occasion, and inform the court of any defense to the order of contempt or underlying action.

IX.

SECOND CAUSE OF ACTION

86. Plaintiffs restate, reallege, and incorporate each and every allegation in paragraphs 1-85.

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87. The Fourteenth Amendment to the United States Constitution provides that no state shall "deny to any person within its jurisdiction the equal protection of the laws".

88. New York Judiciary Law Article 19 gives the courts the power in civil contempt proceedings to commit indigent individuals to jail for indefinite periods of time until individuals pay the fine imposed and, as a result, the statute works an invidious discrimination against poor persons without justification in violation of the Fourteenth Amendment to the United States Constitution.

X.

THIRD CAUSE OF ACTION

89. Plaintiffs restate, reallege, and incorporate each and every allegation in paragraphs 1-88.

90. The Eighth Amendment of the United States Constitution provides that no person shall be subjected to "cruel and unusual punishments".

91. Judiciary Law, Article 19, authorizes the Defendants to commit and hold individuals in jail in civil contempt proceedings for periods of time disproportionate to their offense in violation of the Eighth and Fourteenth Amendment to the United States Constitution.

XI.

FOURTH CAUSE OF ACTION

92. Plaintiffs restate, reallege, and incorporate each and every allegation in paragraphs 1-91.

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93. The Fourth Amendment of the United States Constitution provides for the freedom from seizure of property except upon probable cause.

94. New York Judiciary Law Article 19 authorizes the imposition of a fine which is to be paid over to the aggrieved party under the direction of the court. As the fine may exceed the amount of damage suffered by the aggrieved party, the fine constitutes a wrongful seizure of property without probable cause in violation of the Fourth and Fourteenth Amendments to the United States Constitution.

XII.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully pray, on behalf of themselves and all others similarly situated, that this Honorable Court:

1. Assume jurisdiction of this cause, convene a three-judge district court pursuant to 28 U.S.C. §§ 2281 and 2284 to determine this controversy, and set this case down promptly for a hearing.

2. Determine by order, pursuant to Rule 23(c)(1) of the Federal Rules of Civil Procedure, that this action be maintained as a class action.

3. Pending a hearing and determination by the three-judge court, grant a temporary restraining order pursuant to 28 U.S.C. § 2284 (3) restraining defendants, their successors in office, agents and employees, and all other persons in action concert and participation with them, from continuing to cause irreparable harm to Plaintiff Ward by

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enforcing civil contempt proceedings under Article 19 of the New York State Judiciary Law and threatening to imprison Plaintiff Ward.

4. Enter a final judgment pursuant to 28 U.S.C. §§ 2201 and 2202 and Rules 54, 57 and 58 of the Federal Rules of Civil Procedure declaring that New York State Statutes 756, 757, 765, 767, 769, 770, 771, 772, 773, 774, and 775 are invalid on the grounds that it is violative of provisions contained in the Fourth, Fifth, Eighth, and Fourteenth Amendments to the Constitution of the United States.

5. Enter preliminary and permanent injunctions, pursuant to Rule 65 of the Federal Rules of Civil Procedure, enjoining defendants, their successors in office, agents and employees, and all other persons in active concert and participation with them from enforcing civil contempt proceedings under Article 19 of the New York State Judiciary Law.

6. Enter Judgment on behalf of the Plaintiff Vail in the amount of \$100,000 for his unlawful imprisonment.

7. Enter Judgment on behalf of the plaintiff McNair in the amount of the \$100,000 for his unlawful imprisonment.

8. Enter Judgment on behalf of plaintiff Vail in the amount of \$294.25 against defendant Public Loan the recipient of the fine unlawfully imposed in violation of the Fifth, Eighth and Fourteenth Amendments.

9. Enter Judgment on behalf of plaintiff McNair in the amount of \$283.75 against defendant Montgomery the recipient of the fine unlawfully imposed in violation of the Fourth, Fifth, Eighth and Fourteenth Amendments.

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10. Pursuant to Rule 54(d) of the Federal Rules of Civil Procedure, allow plaintiff his costs herein, and also grant him and all persons similarly situated such additional or alternative relief, as may seem to this court to be just, proper, and equitable.

Respectfully submitted,

MID-HUSON VALLEY LEGAL SERVICES PROJECT
(Monroe County Legal Assistance Corp.)
Attorneys for Plaintiffs
50 Market Street
Poughkeepsie, New York 12601
Telephone: 914-452-7911
John D. Gorman, of Counsel
Jane E. Bloom, of Counsel

MONROE COUNTY LEGAL ASSISTANCE CORP.
GREATER UP-STATE LAW PROJECT
K. WADE EATON
RENE H. REIXACH, JR.
80 West Main Street
Rochester, New York 14614
Telephone: 716-454-6500

(Affidavits of verification sworn to October 29, 1974,
Patrick Ward, Harry Vail, Jr. Jurat.)

Order to Show Cause.

[SAME TITLE]

Upon the complaint of the plaintiffs, sworn to October 29th, 1974, the affidavit of plaintiff Patrick Ward, sworn to on October 29th, 1974, and the affidavits of John D. Gorman, Esq., sworn to on October 29th, 1974, it is hereby ordered, that the defendants show cause before this Court at the United States Courthouse, Foley Square, Room 706, New York, New York, on November 6, 1974, at 10 a.m., why an order should not be entered granting the plaintiffs herein the following relief:

1. An order pursuant to Rule 23(c)(1) of the Federal Rules of Civil Procedure determining that this action may properly proceed as a class action pursuant to Rule 23(a), (b)2 because the class, consisting of all persons subject to or those who have been subjected to civil contempt procedures as set forth in New York Judiciary Law, Article 19, Sections 756, 757, 765, 767, 769, 770, 771, 772, 773, 774 and 775 is so numerous that joinder of all members is impracticable; there are questions of law and fact common to the class; the claims of the representatives are typical of the claims of the class; the representatives will fairly and adequately protect the interests of the class; and the parties opposing the class have acted on grounds generally applicable to the class, making appropriate final injunctive and declaratory relief with respect to the class as a whole.

2. The convening of a statutory court of three judges for the purpose of hearing and determining this application for a preliminary and permanent injunction and this cause, in accordance with the provisions of Title 28, United

Order to Show Cause.

States Code, Sections 2281 and 2284 which require the convening of such a court when an interlocutory and permanent injunction is sought to restrain the enforcement of a statewide statute that is alleged to conflict with the Constitution of the United States. The preliminary and permanent injunctions are sought to restrain the defendants, their successors, agents and employees, and all others acting in concert with them, from enforcement, operation and execution of New York State Judiciary Law, Article 19, Sections 756, etc., which set forth the procedures in civil contempt proceedings.

3. A temporary restraining order pursuant to Title 28, United States Code, Section 2284(3), and preliminary injunction restraining the defendants, their successors, agents, employees, and all those acting in concert with them from imposing any fines and/or imprisonment on plaintiff Ward or the class he represents pursuant to New York Judiciary Law, Article 19, Section 756, etc.

Plaintiff Ward seeks this relief for himself and all others similarly situated on the grounds that:

(a) He and all others similarly situated are threatened with imminent and irreparable injury in that he is subject to arrest and imprisonment on or about November 4, 1974, pursuant to an Order of Contempt, issued by defendant Aldrich in compliance with New York Judiciary Law, Article 19, Sections 756, etc.;

(b) The issuance of a temporary restraining order will not cause undue inconvenience or loss to the defendants but will prevent irreparable injury to plaintiff Ward and others similarly situated;

(c) New York Judiciary Law, Article 19, Section 756 etc. violates the Fifth, Eighth, and Fourteenth Amendments of the United States Constitution;

Order to Show Cause.

(d) Plaintiff Ward has no adequate remedy at law, as set forth more fully in the verified complaint and the affidavit of plaintiff Ward.

ORDERED, that this ORDER TO SHOW CAUSE, together with papers upon which it is granted be served personally upon the defendants or their attorneys on or before the 31st day of October, 1974 by noon.

Dated: October 30, 1974.

Issued at 11:50 p.m.

s/ EDWARD WEINFELD
United States District Judge

Affidavit of John D. Gorman (Annexed).

[SAME TITLE]

STATE OF NEW YORK }
COUNTY OF DUTCHESS } ss.:

JOHN D. GORMAN, being duly sworn, deposes and says:

1. I am Managing Attorney of the Poughkeepsie Office of the MID-HUDSON VALLEY LEGAL SERVICES PROJECT, Monroe County Legal Assistance Corp., attorneys for the plaintiffs, with offices at 50 Market Street, Poughkeepsie, New York.

2. I submit this affidavit in support of plaintiffs' motion for a temporary restraining order, preliminary injunction, a determination that this action may proceed as a class action and a determination to convene a statutory court of three judges pursuant to Title 28, United States Code, Sections 2281 and 2284.

3. The plaintiffs, who are persons currently subject to or have been subject to contempt proceedings pursuant to New York Judiciary Law, Article 19, Section 756 etc., individually and on behalf of the class they represent, seek declaratory and injunctive relief against the imposition of fines and/or imprisonment pursuant to said statute on the grounds that the statute violates plaintiffs' rights as secured by the Fourth, Fifth, Eighth, and Fourteenth Amendments to the United States Constitution.

4. In addition, plaintiffs Vail and McNair seek damages for wrongful imprisonment and return of fines paid by them.

Affidavit of John D. Gorman (Annexed).

5. A temporary restraining order is sought on behalf of plaintiff Ward because he is in danger of incarceration on or about November 4, 1974, pursuant to an Order of Contempt issued by defendant Aldrich on September 19, 1974. Defendant Aldrich's Order holds Ward in contempt of court and imposes a fine of \$250.00 plus \$20.00 costs and further provides that Ward may purge himself of the contempt by paying the fine to Gorman's attorney within 30 days after service of the Order of Contempt. In the event the fine is unpaid after the 30 day period, Aldrich's Order continues, defendant Gorman can secure an *ex parte* Warrant of Commitment from the Court which shall require defendant Quinlan to arrest and detain plaintiff Ward until the entire fine is paid.

6. The Order of Contempt was served upon plaintiff Ward on or about October 3, 1974, thereby subjecting him to the imminent danger of arrest and imprisonment on November 4, 1975, if the fine is unpaid.

7. Plaintiff Ward is unable to pay the fine. He is currently unemployed and maintains himself on Unemployment Insurance Benefits of \$61.00 a week, of which \$30.00 is paid to his wife pursuant to a New York State Family Court order of support.

8. Upon information and belief, plaintiff Ward has attempted to borrow to pay the fine from family and friends, and finance companies, without success.

9. By virtue of the foregoing, defendant Ward is in imminent danger of suffering immediate and irreparable injury, and accordingly prays for an order restraining defendant Quinlan from arresting and incarcerating him pending hearing and determination of this motion.

Affidavit of John D. Gorman (Annexed).

10. There has been no previous application for the relief requested herein.

11. There is no adequate remedy at law.

RULE 23 (a)

12. With respect to plaintiffs' request to maintain this action as a class action, there are four prerequisites for class relief pursuant to Rule 23(a), which are:

"(1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class."

All of these prerequisites are met in this action.

RULE 23 (a) (1)—IMPRACTICABILITY OF JOINDER

13. In the past twelve months, there have been approximately 500 persons who have been subjected to contempt proceedings before the Dutchess County Court pursuant to New York Judiciary Law, Article 19, Section 756 etc.

14. Due to the nature of the relief sought, it will benefit not only the plaintiffs and other persons who have or are now subject to the contempt procedures, but also all those who may face such procedures in the future.

RULE 23 (a) (2)—COMMON ISSUES

15. The common question applicable to all the members of the class is whether their Constitutional rights under

Affidavit of John D. Gorman (Annexed).

the Fourth, Fifth, Eighth and Fourteenth Amendments are violated by the contempt procedures set forth in Article 19 of the New York Judiciary Law.

RULE 23 (a) (3)—TYPICALITY

16. While the facts on the merits of any particular contempt proceeding before New York courts are unique, there is a common claim typical of the entire class that the contempt procedures set forth in Article 19 of the Judiciary Law are violative of the Fourth, Fifth, Eighth and Fourteenth Amendments to the United States Constitution.

17. There is no conflict between the relief sought by the plaintiffs and the interests of the rest of the members of the class. The plaintiffs seek to secure the right to a hearing and the right to counsel for those persons fined and/or imprisoned pursuant to Judiciary Law, Article 19. In addition, the plaintiffs seek to have the statute declared unconstitutional on the grounds that it violates the ban on "cruel and unusual" treatment and the Equal Protection Clause of the Constitution. The members of the class cannot be hurt by having this right established because in the event fine and/or imprisonment is imposed, they will be entitled to Constitutional safeguards as provided in the Fourth, Fifth, Eighth and Fourteenth Amendments.

RULE 23 (a) (4)—ADEQUACY OF REPRESENTATION

18. The plaintiffs here clearly have a stake in this proceeding which makes their representation adequate. Plaintiffs Vail and McNair have already suffered fines and imprisonment in violation of their Constitutional rights and plaintiff Ward is in imminent danger of imprisonment

Affidavit of John D. Gorman (Annexed).

and has already been fined pursuant to the challenged statutes. As all three plaintiffs remain judgment debtors, they may become subject to the contempt proceedings in question some time in the future.

19. The plaintiffs are represented by attorneys employed by Legal Services programs funded by the Office of Economic Opportunity. Your deponent is a member of the Bar of this Court and has had experience in class action litigation, *Braxton et al. v. Poughkeepsie Housing Authority*, 73 Civ. 4077 (CMM). In addition, I am being assisted by other attorneys employed by Monroe County Legal Assistance Corp. who have extensive experience in class action litigation in the Southern and Western Districts of New York.

RULE 23 (b)(2)

20. If an action meets the prerequisites of Rule 23 (a), it may be maintained as a class action if it further meets the requirements of one or more of the provisions of Rule 23 (b). This action meets the requirements of 23 (b)(2), which provides for maintenance of a class action where

the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole. . . .

21. The parties opposing the class, the defendants, have implemented and enforced the provisions of Article 19 of the Judiciary Law with respect to contempt in violation of the plaintiffs Constitutional rights.

Affidavit of John D. Gorman (Annexed).

22. By failing to provide an opportunity to be heard and the right to counsel, and by having sanctioned plaintiffs in violation of the Eighth and Fourteenth Amendments, the defendants have acted and are acting in the same way as to all persons subject to contempt proceedings pursuant to Article 19, Judiciary Law. As a result, declaratory and injunctive relief, as requested by the plaintiffs, is appropriate.

WHEREFORE, your deponent prays that this Court enter the following:

1. A temporary restraining order restraining the defendants, their successors, agents, employees and all those acting in concert with them from imposing any fines and/or imprisonment on the plaintiffs or the class they represent pursuant to Article 19 of the New York Judiciary Law.

2. An order determining that this action be maintained as a class action under Rule 23 (b)(2) as requested in the complaint.

3. An order convening a three-judge court pursuant to 28 U.S.C. 2281 and 2284.

s/ JOHN D. GORMAN
JOHN D. GORMAN

(Jurat)

Affidavit of Patrick Ward.

[SAME TITLE]

STATE OF NEW YORK }
COUNTY OF DUTCHESS } ss.:

PATRICK WARD, being duly sworn deposes and says:

1. I am a plaintiff in this action and submit this affidavit in support of a motion for a temporary restraining order, a preliminary injunction, a determination that this action may proceed as a class action, and a determination to convene a statutory court of three judges pursuant to Title, U.S.C., Sections 2281 and 2284.

2. I am a citizen of the United States and the State of New York and am presently residing at 94 Washington Street, Poughkeepsie, New York.

3. I am currently unemployed and support myself, my divorced wife and child on unemployment insurance benefits in the amount of \$61.00 per week. I pay \$30 per week to my divorced wife for the support of herself and my child.

4. In September, 1973, my former wife, Patricia Ward, received medical services from defendant Goran and was charged \$125.00 for said services. At that time my wife, Patricia Ward, and I were married and living together.

5. On December 26, 1973, a default judgment was entered against me in the action *Arnold Goran, M.D., P.C. v. Patrick Ward*, Index No. 1973/881D in Dutchess County Court for \$146.84.

Affidavit of Patrick Ward.

6. On December 27, 1973, I was served with a subpoena issued by Jeffrey S. Graham, Esq., attorney for defendant Goran, which required me to appear in person at the Dutchess County Courthouse on January 11, 1974, to produce books and records and to be examined in connection with defendant Goran's efforts to enforce the December 26, 1973, default judgment.

7. Pursuant to the subpoena, I appeared on January 11, 1974 at the Dutchess County Courthouse. However, defendant Goran's attorney, Jeffrey Graham, did not appear. An employee of the Court contacted Mr. Graham by phone and informed him that I had appeared as directed by the subpoena. Mr. Graham instructed me to come to his office.

8. When I went to Mr. Graham's office on January 11, 1974, Mr. Graham asked me questions regarding my salary, family size, and employment status. Because the subpoena required me to appear at the Dutchess County Courthouse, I refused to answer Mr. Graham's questions in his office and informed him that I would provide all material information to the Court. Mr. Graham became very angry with me and informed me to leave his office.

9. From the latter part of January, 1974, to March, 1974, I left New York State and visited my parents in Florida.

10. On May 15, 1974, I was served with a Notice of Motion for Order Finding Defendant in Contempt of Court ordering me to appear in Dutchess County Court on May 28, 1974. I did not appear in Dutchess County Court on this date or on July 16, 1974, or July 23, 1974.

11. In May, 1974, I contacted Mr. Graham and arranged to satisfy the judgment by paying \$10.00 a week to Graham until full payment was made.

Affidavit of Patrick Ward.

12. On July 4, 1974, I was "laid-off" from my job. A few days afterwards, I notified Mr. Graham of this development and told him that I would be unable to make the \$10.00 a week payments. Mr. Graham became very angry and told me that "I'll get the money from you one way or another".

13. On or about October 1, 1974, I passed Mr. Graham in the street in Poughkeepsie, New York, and as I walked by he stated, "Some people don't pay their bills and are going to jail".

14. On or about October 3, 1974, I was served with an Order of Contempt issued by defendant Aldrich on September 19, 1974. The Order of Contempt fines me \$250.00 and \$20.00 costs. Unless I pay this fine within thirty days of service of the Order, I will be subject to imprisonment in the Dutchess County Jail until I pay the entire fine.

15. I currently have no funds available or possessions that could be used to pay the fine imposed. Therefore, I am in imminent danger of imprisonment.

16. If I am imprisoned, I will be unable to collect Unemployment Insurance Benefits. I will be unable to help support my ex-wife and child. I will be unable to seek further employment.

PATRICK N. WARD
PATRICK WARD

(Jurat)

Exhibit "A", Order of Contempt.

At a Special Term of the County Court held in and for the County of Dutchess at the County Courthouse at Poughkeepsie, New York on the 19th day of September, 1974.

PRESENT: HONORABLE RAYMOND E. ALDRICH, JR.

STATE OF NEW YORK
COUNTY COURT : COUNTY OF DUTCHESS

ARNOLD GORAN, M.D., P.C.
74 West Cedar Street
Poughkeepsie, New York

Plaintiff,

—against—

PATRICK WARD
94 Washington Street
Poughkeepsie, New York

Defendant.

Index No. 1973/881D

The defendant in the above entitled action having been personally served with a subpoena Duces Tecum pursuant to section 5224 of the Civil Practice Law and Rules of the State of New York directing him to produce certain records and to appear in person for an examination and a place named therein to be held on the 11th day of January, 1974 the matter having been thereafter adjourned until the 25th day of February, 1974, the defendant having refused and willfully neglected to abide by, obey, nor comply with the terms of said Subpoena Duces Tecum, and that the conduct of the defendant was calculated to and actually did impede, impair and prejudice the rights and remedies of the plaintiff and the plaintiff having duly

Exhibit "A", Order of Contempt.

moved this Court for an Order finding defendant in Contempt of Court pursuant to Rule 5251 of the Civil Practice Law and Rules, on the grounds that defendant failed to produce certain records for an examination at a place named on the 11th day of January, 1974 and adjourned to the 25th day of February, 1974, as required by Subpoena Duces Tecum, and the said Motion having regularly come on to be heard by me,

Now, upon reading and filing the Notice of Motion and Affidavit of JEFFREY S. GRAHAM, Esquire, and it appearing that in Contempt of this Court the defendant has failed, refused, and willfully neglected to abide by, obey, and comply with the Subpoena Duces Tecum and that his misconduct was calculated to and actually did impair, impede, prejudice and defeat the rights and remedies of the plaintiff.

Upon Motion of JEFFREY S. GRAHAM, Esquire, attorney for plaintiff, it is

ORDERED, that defendant Patrick Ward, has committed the offense charged, and is guilty of misconduct in Contempt of Court, which Contempt was calculated to and actually did defeat, impair, impede and prejudice the rights and remedies of the plaintiff herein; and it is further

ORDERED, that the said defendant, Patrick Ward, as punishment for said Contempt of Court, be and hereby is fined the amount of \$250.00 and \$20.00 costs, the said amount when paid, with the exception of the costs, to be applied in reduction of the Judgment; and it is further

ORDERED, that the defendants may purge themselves of the aforesaid Contempt by paying to the plaintiff's attorney the sum of \$250.00 plus \$20.00 costs within thirty (30)

Exhibit "A", Order of Contempt.

days after the service upon the defendant of a certified copy of this Order with Notice of Entry thereof; and it is further,

ORDERED, that in the event that the defendant fails to purge himself of this Contempt, as provided herein, within the time specified the plaintiff may apply ex parte to this Court upon proof by affidavit of the defendant's failure to purge himself, as provided herein for an Order directing the sheriff of any County wherein the defendant may be found, to detain the defendant in close custody in the common or County jail of said County, until he shall have paid the entire fine imposed herein, or any part of such fine that remains unpaid at the time of said commitment, or until he shall have paid the entire fine imposed herein, or any part of such fine that remains unpaid at the time of said commitment, or until he shall have otherwise been discharged according to law.

ENTER

s/ RAYMOND E. ALDRICH, JR.
RAYMOND E. ALDRICH, JR.
Certification by Attorney

Temporary Restraining Order.

[SAME TITLE]

Upon the complaint filed herein, the affidavits of Patrick Ward and John D. Gorman, sworn to under oath, and upon the representations made by counsel during the hearing on Plaintiffs Order to Show Cause for a Temporary Restraining Order held on November 6, 1974, and it appearing therefrom that defendants unless restrained will arrest and imprison plaintiff Ward pursuant to New York State Judiciary Law, Article 19, and that immediate and irreparable injury will be done to plaintiff Ward if he is arrested and imprisoned,

IT IS HEREBY ORDERED that defendants, their successors, agents, assignees, principals, assignors and persons acting in concert with them, are temporarily restrained pursuant to 28 U.S.C. 2284 (3), from arresting and imprisoning plaintiff Ward pursuant to New York State Judiciary Law Article 19, until a hearing and determination is made by the full three-judge district court or until this court revokes the temporary restraining order.

Dated 4.00 o'clock P.M.
November 8th, 1974.

s/ JOHN M. CANNELLA
United States District Judge

Order to Show Cause, January 8, 1975.

[SAME TITLE]

Upon the Affidavits of Leslie Nameth, McKinley Humes, Joseph Rabasco and Joanne Harvard, and their attorney, John D. Gorman, and upon the Complaint in this action, it is

ORDERED, that the plaintiff, defendants, Herbert H. Redl, d/b/a H. R. Redl's Auto Body Works, Gladys Rabasco and Hon. W. Vincent Grady, and Domestic Finance, show cause before this Court at a Civil Motion Term to be held at the United States Courthouse, Foley Square, New York, New York, Room 1001, on the 27th day of January, 1975, at 4:00 P.M. or as soon thereafter as counsel can be heard, why an order should not be made herein, granting the motion of proposed intervenor-plaintiffs Leslie Nameth, McKinley Humes, Joseph Rabasco, and Joanne Harvard,

- (a) Pursuant to Rules 23 and 24 (b) of the Federal Rules of Civil Procedure, to intervene in this action as named party plaintiffs,
- (b) Pursuant to Rules 19a, 20a, and 21 to add as party defendants, Herbert H. Redl, d/b/a H. H. Redl's Auto Body Works; Hon. W. Vincent Grady, Gladys Rabasco, and Domestic Finance.
- (c) Pursuant to Rule 65 of the Federal Rules of Civil Procedure, for a preliminary injunction enjoining the defendants and Herbert H. Redl, d/b/a H. H. Redl's Auto Body Works, from imposing any fines and/or imprisoning Leslie Nameth, McKinley Humes, and Joanne Harvard, under color of Article 19, Sections 756, 757, 765, 767, 769, 770, 771,

Order to Show Cause, January 8, 1975.

772, 773, 774, and 775 of the New York Judiciary Law and enjoining defendants Aldrich, Juidice and Quinlan from imposing any fines and/or imprisoning Leslie Nameth, McKinley Humes, and Joanne Harvard, pursuant to Article 19 of the Judiciary Law, pending a final determination of this action and waiving the security requirement of Rule 65 (c);

- (d) Pursuant to Rule 65 of the Federal Rules of Civil Procedure, for a preliminary injunction enjoining the defendants and Hon. W. Vincent Grady and Gladys Rabasco from proceeding with Gladys Rabasco's application for an Order of Contempt against Joseph Rabasco, pursuant to Article 19 of the New York Judiciary Law in *Gladys Rabasco v. Joseph Rabasco*, Index No. 3087/1974, until an attorney has been assigned to represent Joseph Rabasco in the contempt proceeding pending a final determination of this action and waiving the security requirement of Rule 65 (c).
- (e) Pursuant to Rules 6(b), 7, 8, 23 and 24 of the Federal Rules of Civil Procedure, for an order allowing a reasonable extension of time to file a proposed intervenor's complaint, and/or deeming the affidavits of Leslie Nameth, McKinley Humes, Joseph Rabasco, and Joanne Harvard, to be a verified pleading pending determination of this motion.

The grounds for the motion are that it is appropriate for Leslie Nameth, McKinley Humes, Joseph Rabasco, and Joanne Harvard, members of the alleged class of plaintiffs in the main action, to intervene at this early stage of the proceedings, since the facts of their cases, the legal

Order to Show Cause, January 8, 1975.

claims they make, and their claims for relief are all substantially identical to those of the named plaintiffs. Further, Leslie Nameth, McKinley Humes, and Joanne Harvard are in dire need of immediate individual relief as they have been threatened with imprisonment within the immediate future by the defendants under the law challenged in the main action. Joseph Rabasco is in dire need of immediate individual relief as he is in danger of being held in contempt of court pursuant to Article 19 of the New York Judiciary Law and, as a result, he is in danger of incarceration and/or fine without the benefit of assigned counsel as he is financially unable to retain an attorney. Leslie Nameth, McKinley Humes, Joseph Rabasco, and Joanne Harvard are without sufficient funds, therefore, a waiver of security requirements should be granted.

IT IS HEREBY ORDERED, that it appearing to the Court that the defendant Herbert H. Redl, d/b/a H. H. Redl's Auto Body Works, will cause irreparable injury, damage and loss to Leslie Nameth and defendant Montgomery will cause irreparable injury, damage and loss to McKinley Humes, and defendant Domestic Finance will cause irreparable injury, damage and loss to Joanne Harvard, unless they are restrained from imprisoning Leslie Nameth, McKinley Humes, and Joanne Harvard, pursuant to Article 19 of the New York Judiciary Law, before adverse parties and their attorneys can be heard in opposition, defendants, Herbert H. Redl, d/b/a H. H. Redl's Auto Body Works, and Domestic Finance, their subordinates, agents and attorneys, be and they are hereby Restrained from imprisoning Leslie Nameth and McKinley Humes pursuant to Article 19, Sections 756, etc., of the New York Judiciary Law, pending a final hearing and determination of their motion for a preliminary injunction. by a three-judge court or otherwise, as determined (see the Temporary Restraining Order of Nov. 8, 1974)

Order to Show Cause, January 8, 1975.

IT IS HEREBY ORDERED, that it appearing to the Court that the Hon. W. Vincent Grady and Gladys Rabasco, will cause irreparable injury, damage and loss to Joseph Rabasco; they are therefore restrained from proceeding with Gladys Rabasco's application pursuant to Article 19 of the New York Judiciary Law for an Order of Contempt against Joseph Rabasco, in *Gladys Rabasco v. Joseph Rabasco*, Dutchess County Supreme Court, Special Term, Index No. 3087/1974, unless counsel is assigned to Joseph Rabasco pending a final hearing and determination of his motion for a preliminary injunction, by a three-judge court or otherwise, as determined (see the Temporary Restraining Order of Nov. 8, 1974)

ORDERED, that the security requirements of Rule 65 of the Federal Rules of Civil Procedure be waived, and it is further

ORDERED that this Order to Show Cause, together with the papers upon which it is granted be served personally upon the defendants or the attorneys for defendants on or before the 9th day of January, 1975, by 5:00 P.M.

s/ THOMAS P. GRIESA
United States District Judge

Dated: New York, New York
January 8, 1975
Issued at 3:30 P.M.

Affidavit of Leslie Nameth (Annexed).

[SAME TITLE]

LESLIE NAMETH, being duly sworn, deposes and says as follows:

1. Plaintiff Nameth is a citizen of the United States and the State of New York. He resides at 136 Church Street, Poughkeepsie, New York, with his wife and two children.
2. Plaintiff Nameth is 32 years of age.
3. In 1971, Plaintiff Nameth was involved in an automobile accident. Plaintiff Nameth hired defendant H.H. Redl's Auto Body Works to tow his car at a fee of \$50. After the automobile was towed, Plaintiff Nameth paid defendant Redl's \$10. Plaintiff Nameth made about \$20 in additional payments to defendant Redl's at a later time.
4. On July 31, 1974, a default judgment was entered in the City Court of the City of Poughkeepsie, New York, in the case *Herbert H. Redl, d/b/a H.H. Redl's Auto Body Works v. Leslie Nameth* in favor of Herbert H. Redl and against Plaintiff Nameth for \$69.82.
5. On August 8, 1974, Thomas A. Reed, Attorney for defendant Redl served a subpoena duces tecum, requiring Plaintiff Nameth to appear on August 30, 1974, before a notary public at 75 Market Street, Poughkeepsie, New York, for the taking of a deposition regarding all matters relevant to the satisfaction of the judgment of July 31, 1974, and to produce certain records.

Affidavit of Leslie Nameth (Annexed).

6. When Plaintiff Nameth failed to appear on August 30, 1974, Defendant Juidice issued an Order to Show Cause pursuant to Judiciary Law Article 19, Section 757(1) ordering Plaintiff Nameth to appear at the Dutchess County Court on September 24, 1974, at 10:00 a.m. to "show cause why he should not be punished as for contempt for violation of and non-compliance with the said subpoena in that he failed to appear or respond pursuant thereto . . ."

7. When Plaintiff Nameth failed to appear on September 10, 1974, the hearing on the Order to Show Cause was adjourned to October 8, 1974, at 10:00 a.m.

8. When Plaintiff Nameth failed to appear in County Court on October 8, 1974, Defendant Juidice issued an Order of Contempt, pursuant to Judiciary Law Article 19, Section 770 holding Plaintiff Nameth in contempt.

9. When Plaintiff Nameth failed to comply with the Order of Contempt, Defendant Juidice issued an *ex parte* Commitment Order pursuant to Judiciary Law Article 19, Section 756.

10. Plaintiff Nameth is in imminent danger of being imprisoned pursuant to the Order of Contempt.

11. At the present time Plaintiff Nameth refuses to pay the fine because he maintains that Defendant Redl did not give him a proper credit on the towing charges for the new tires on the automobile.

12. Plaintiff Nameth contends that the imposition of the fine and the punishment of imprisonment in the event the fine is unpaid is violative of his rights secured by the Fifth, Eighth and Fourteenth Amendments to the United States Constitution.

Affidavit of Leslie Nameth (Annexed).

13. With respect to the fine imposed pursuant to the Order of Contempt, Plaintiff Nameth contends that Defendant Juidice wrongfully imposed the fine without affording him the procedural right to answer Defendant Redl's charge of contempt or to challenge the amount of the fine imposed in violation of his right to due process secured by the Fifth and Fourteenth Amendments.

14. Plaintiff Nameth has not been apprised of his right to counsel in this proceeding in violation of the right to counsel secured by the Fifth and Fourteenth Amendments.

15. Plaintiff Nameth contends that the imprisonment that may occur due to non-payment of the fine is in violation of the Eighth Amendment's ban upon cruel and unusual punishment in that the term of imprisonment is indefinite and disproportionate to the offense alleged.

16. No previous applications for similar relief have been made.

LESLIE NAMETH
LESLIE NAMETH

(Jurat)

Affidavit of McKinley Humes (Annexed).

[S A M E T I T L E]

McKINLEY HUMES, being duly sworn, deposes and says as follows:

1. Plaintiff Humes is a citizen of the United States and the State of New York. He resides at 22 Delafield Street, Poughkeepsie, New York.
2. Plaintiff Humes is 47 years of age.
3. On or about 1966, Plaintiff Hume's common-law wife, Florence S. Humes, received medical services from Defendant Montgomery, Jr. M.D.
4. On April 19, 1973, a default judgment was entered in the City Court of the City of Poughkeepsie, New York, in the case *George Montgomery, Jr., M.D. v. McKinley Humes and Florence S. Humes*, in favor of George Montgomery, Jr., M.D. and against Plaintiff Humes and Florence S. Humes for \$233.84.
5. On June 12, 1973, Thomas A. Reed, Attorney for Defendant Montgomery served by mail a subpoena duces tecum, requiring Plaintiff Humes to appear on June 22, 1973, before a notary public at 75 Market Street, Poughkeepsie, New York, for the taking of a deposition regarding all matters relevant to the satisfaction of the judgment of April 19, 1973, and to produce certain records.
6. When Plaintiff Humes failed to appear on June 22, 1973, Defendant Juidice issued an Order to Show Cause

Affidavit of McKinley Humes (Annexed).

pursuant to Judiciary Law Article 19, Section 757(1) ordering Plaintiff Humes to appear at the Dutchess County Court on July 17, 1973, at 10:00 a.m. to "show cause why he should not be punished as for contempt for violation of and non-compliance with the said subpoena in that he failed to appear or respond pursuant thereto . . ."

7. When Plaintiff Humes failed to appear on July 17, 1973, the hearing on the Order to Show Cause was adjourned to July 31, 1973, at 10:00 a.m.

8. When Plaintiff Humes failed to appear in County Court on July 17, 1973, Defendant Juidice issued an Order of Contempt on August 14, 1973, pursuant to Judiciary Law Article 19, Section 770 holding Plaintiff Humes in contempt and ordering:

ORDERED that the said defendant McKinley Humes for his misconduct and willful contempt be and he is hereby fined the sum of \$221.84 to be paid to the plaintiff, besides the sum of \$10.00 costs of this proceeding by paying said amount to Reed & Reed, Esqs., attorneys for the plaintiff, by making installment payments in the amount of Twenty (\$20.00) dollars per week, commencing one week after service of a certified copy of this order. Upon payment as aforesaid, the said defendant shall be deemed purged of his contempt, but in the event of his failure to pay as directed, said defendant be committed by the Sheriff of the County wherein he may be found in the County Jail of such County to remain retained there until he has paid the fine imposed as aforesaid, together with the costs and the sheriff's legal fees in connection therewith and that a warrant of commitment be issued accordingly without further notice.

Affidavit of McKinley Humes (Annexed).

9. Defendant Juidice issued the Order of Contempt based upon the following:

Upon reading and filing the Order to Show Cause dated the 27th day of June, 1973, with due proof of service thereof on the defendant, McKinley Humes, the affirmation of Thomas A. Reed dated the 25th day of June, 1973, and upon all the pleadings and proceedings heretofore had herein, and after hearing Reed & Reed, Esqs., Thomas A. Reed, of counsel, for the plaintiff in support of said motion, and there being no opposition thereto . . .

10. A copy of this Order of Contempt was served on Plaintiff Humes in December, 1974.

11. When Plaintiff Humes failed to comply with the Order of Contempt, Defendant Juidice issued an *ex parte* commitment order pursuant to Judiciary Law Article 19, Section 756.

12. At the present time Plaintiff Humes is unemployed and does not receive Unemployment Insurance Benefits. Plaintiff Humes has been unemployed since June, 1974. He maintains himself on 10% U.S. Government Veteran's Disability payments of \$32 per month. He does odd jobs for his landlord to pay for his rent. He has no other funds available or possessions that could be used to pay the fine imposed.

13. Plaintiff Humes is in imminent danger of being imprisoned pursuant to the Order of Contempt because he is financially unable to pay the fine imposed.

14. Plaintiff Humes contends that the imposition of the fine and the punishment of imprisonment in the event the fine is unpaid is violative of his rights secured by the

Affidavit of McKinley Humes (Annexed).

Fourth, Fifth, Eighth and Fourteenth Amendments to the United States Constitution.

15. With respect to the fine of \$221.84 plus 10.00 costs, Plaintiff Humes contends that Defendant Juidice wrongfully imposed the fine without affording him the procedural right to answer Defendant Montgomery's charge of contempt or to challenge the amount of the fine imposed in violation of his right to due process secured by the Fifth and Fourteenth Amendments.

16. Plaintiff Humes has not been apprised of his right to counsel in this proceeding nor is there any provision pursuant to Article 19 of the Judiciary Law for the appointment of counsel for indigent persons faced with the imminent danger of imprisonment in violation of the right to counsel secured by the Fifth and Fourteenth Amendments.

17. The punishment of imprisonment in the event the fine is unpaid is violative of the Equal Protection clause of the Fourteenth Amendment in that it works an invidious discrimination against those who are too poor to pay the fine. Plaintiff Humes is one who is indigent and unable to pay the fine and, as a result, he is faced with the imminent danger of imprisonment.

18. Plaintiff Humes contends that the imprisonment that may occur due to non-payment of the fine is in violation of the Eighth Amendment's ban upon cruel and unusual punishment in that the term of imprisonment is indefinite and disproportionate to the offense alleged.

19. No prior applications for similar relief have been made.

s/ MCKINLEY HUMES SR.

(Jurat)

Exhibit —Order of Contempt.

AT a Special Term of the County Court held in and for the County of Dutchess at Poughkeepsie, New York, on the 14th day of August, 1973.

Present:

HON. RAYMOND E. ALDRICH, JR.
DUTCHESS COUNTY JUDGE

Index No. 1973/1667

COUNTY COURT
COUNTY OF DUTCHESS

GEORGE MONTGOMERY, JR., M.D.,

Plaintiff

—against—

McKINLEY HUMES & FLORENCE S. HUMES,

Defendant

Upon reading and filing the Order to Show Cause dated the 27th day of June, 1973, with due proof of service thereof on the defendant, the affirmation of Thomas A. Reed dated the 25th day of June, 1973, and upon all the pleadings and proceedings heretofore had herein, and after hearing Reed & Reed, Esqs., Thomas A. Reed, of counsel, for the plaintiff in support of said motion, and there being no opposition thereto, it is

ORDERED that the defendant McKinley Humes is adjudged of a contempt of this court, which contempt defeated and impaired the rights and remedies of the plaintiff, and it is further

Exhibit—Order of Contempt.

ORDERED that the said defendant McKinley Humes for his misconduct and willful contempt be and he is hereby fined the sum of \$221.84 to be paid to the plaintiff, besides the sum of \$10.00 costs of this proceeding by paying said amount to Reed & Reed, Esqs., attorneys for the plaintiff, by making installment payments in the amount of Twenty (\$20.00) Dollars per week, commencing one week after service of a certified copy of this order. Upon payment as aforesaid, the said defendant shall be deemed purged of his contempt, but in the event of his failure to pay as directed, said defendant be committed by the Sheriff of the County wherein he may be found in the County Jail of such County to remain retained there until he has paid the fine imposed as aforesaid, together with the costs and the sheriff's legal fees in connection therewith and that a warrant of commitment be issued accordingly without further notice.

ENTER,

/s/ Raymond E. Aldrich, Jr.
Dutchess County Judge

(ATTORNEY'S CERTIFICATION)

Affidavit of Joanne Harvard (Annexed).

[SAME TITLE]

JOANNE HARVARD, being duly sworn, deposes and says as follows:

1. Plaintiff Harvard is a citizen of the United States and the State of New York. She resides at 78 Academy Street, Poughkeepsie, New York.
2. Plaintiff Harvard is 21 years of age.
3. On December, 1972, plaintiff Harvard signed a retail installment contract with Balco Furniture Company for \$637.81. Upon information and belief, Balco Furniture Company assigned this contract to defendant Domestic Finance.
4. Plaintiff Harvard made regular payments pursuant to this contract until Franklin Green, the co-signer on the retail installment contract indicated to plaintiff Harvard that he would make all future payments on the contract.
5. On March 20, 1974, a default judgment was entered in the City Court of the City of Poughkeepsie, New York, in the case *Domestic Finance v. Franklin Green and Joanne Harvard* in favor of Domestic Finance and against plaintiff Harvard for \$413.40.
6. On May 1, 1974, Charles P. Morrow, Attorney for defendant Domestic Finance served a subpoena duces tecum, requiring plaintiff Harvard to appear on May 24, 1974, before him at 40 Cannon Street, Poughkeepsie, New York,

Affidavit of Joanne Harvard (Annexed).

for the taking of a deposition regarding all matters relevant to the satisfaction of the judgment of March 30, 1974, and to produce certain records.

7. When plaintiff Harvard failed to appear on May 24, 1974, defendant Juidice issued an Order to Show Cause pursuant to Judiciary Law Article 19, Section 757(1) ordering plaintiff Harvard to appear at the Dutchess County Court on August 13, 1974, at 9:30 a.m. to "show cause why she should not be punished as for contempt for violation of and non-compliance with the said subpoena in that she failed to appear or respond pursuant thereto . . ."
8. When plaintiff Harvard failed to appear on August 13, 1974, the hearing on the Order to Show Cause was adjourned to August 27, 1974.
9. When plaintiff Harvard failed to appear in County Court on August 27, 1974, defendant Juidice issued an Order of Contempt pursuant to Judiciary Law Article 19, Section 770 holding plaintiff Harvard in contempt.
10. When plaintiff Harvard failed to comply with the Order of Contempt, defendant Juidice issued an *ex parte* Commitment Order pursuant to Judiciary Law Article 19, Section 756.
11. On or about November, 1974, deputies of defendant Quinlan arrested plaintiff Harvard pursuant to the Commitment Order and then committed her to the Dutchess County Jail.
12. The deputies of defendant Quinlan arrested and held plaintiff Harvard in the Dutchess County Jail pursuant to Judiciary Law Sections 756 and 774.

Affidavit of Joanne Harvard (Annexed).

13. The plaintiff was released from Dutchess County Jail pursuant to Judiciary Law Section 774, after her mother lent her funds to pay the fine totalling \$294.25.

14. The sum of \$294.25 was delivered to a deputy of defendant Quinlan who, upon information and belief, delivered the money to defendant Domestic Finance pursuant to Section 773 of the Judiciary Law.

15. By virtue of the foregoing, plaintiff Harvard was wrongfully imprisoned for approximately five hours, suffered mental anguish, shame and humiliation, damage to her character and reputation, damage to her credit standing, and was wrongfully deprived of \$294.25 in violation of her Fifth, Eighth, and Fourteenth Amendment rights to the United States Constitution.

16. Plaintiff Harvard contends that the imposition of the fine and the punishment of imprisonment in the event the fine is unpaid is violative of her rights secured by the Fifth, Eighth and Fourteenth Amendments to the United States Constitution.

17. With respect to the fine of \$294.25 costs, plaintiff Harvard contends that Defendant Juidice wrongfully imposed the fine without affording her the procedural right to answer defendant Domestic Finance's charge of contempt or to challenge the amount of the fine imposed in violation of her right to due process secured by the Fifth and Fourteenth Amendments.

18. Plaintiff Harvard has not been apprised of her right to counsel in this proceeding nor is there any provision pursuant to Article 19 of the Judiciary Law for the appointment of counsel for persons in violation of the right

Affidavit of Joanne Harvard (Annexed).

to counsel secured by the Fifth and Fourteenth Amendments.

19. Plaintiff Harvard contends that the imprisonment that occurred due to non-payment of the fine is in violation of the Eighth Amendment's ban upon cruel and unusual punishment in that the term of imprisonment is indefinite and disproportionate to the offense alleged.

20. After plaintiff Harvard was released from the Dutchess County Jail, she made weekly payments on the remaining indebtedness to Charles P. Morrow, attorney for defendant Domestic Finance.

21. On or about December 1, 1974, plaintiff Harvard lost her job at the Eden Park Nursing Home due to illness. Plaintiff Harvard contacted Charles P. Morrow and indicated that she would not be able to make the weekly payments.

22. On December 20, 1974, Charles P. Morrow notified plaintiff Harvard by mail that further legal action would be taken if the weekly payments were not made.

**LAST WARNING BEFORE
FURTHER LEGAL ACTION
WILL BE TAKEN AGAIN!!!**

PER OUR PHONE CONVERSATION ON WEDNESDAY, DEC. 18th, 1974, YOU INFORMED OUR OFFICE THAT YOU ARE NO LONGER EMPLOYED. WE SUGGEST VERY STRONGLY THAT THE \$5.00, FROM WEEK OF 12/4/74, \$10.00 FROM WEEK OF 12/11/74 AND \$10.00 FROM WEEK OF 12/18/74 BE SENT IN IMMEDIATELY!!! REGARDLESS

23. On January 6, 1975, an individual from the office of Charles P. Morrow contacted by phone the plaintiff Har-

Affidavit of Joanne Harvard (Annexed).

vard's mother, Maggie Ruth Harvard, and told her that her daughter would be imprisoned again if she did not make the weekly payment.

24. On January 7, 1975, plaintiff Harvard contacted Charles P. Morrow by phone and asked him if she would be imprisoned again. Mr. Morrow stated that he had no other alternative if she did not make the payments.

25. Plaintiff Harvard currently supports herself on \$94.00 per month she receives from the Dutchess County Department of Social Services. She has no assets or funds available to make the weekly payments to Charles P. Morrow.

26. Plaintiff Harvard is in danger of repeated incarceration pursuant to Article 19 and contempt procedures.

27. Plaintiff Harvard prays that this Court:

(1) Enter judgment on behalf of plaintiff Harvard in the amount of \$100.00 for her unlawful imprisonment.

(2) Enter judgment on behalf of plaintiff Harvard in the amount of \$294.25 against defendant Domestic Finance, the recipient of the fine unlawfully imposed in violation of the Fifth, Eighth, and Fourteenth Amendments.

28. No prior application for similar relief have been made.

Joanne Harvard
JOANNE HARVARD

(Jurat)

Affidavit of Joseph Rabasco (Annexed).

[SAME TITLE]

JOSEPH RABASCO, being duly sworn, deposes and says as follows:

1. Plaintiff Joseph Rabasco is a citizen of the United States and the State of New York. He resides at 3 Midge Drive, Wappingers, Falls, New York.

2. Mr. Rabasco is 60 years of age.

3. In October, 1974, Joseph Rabasco's wife, Gladys Rabasco, commenced a divorce proceeding against him in the Dutchess County Supreme Court (*Rabasco v. Rabasco*, Index No. 3087/1974). Upon service of the Summons in the divorce action, Mrs. Rabasco also served motion papers for counsel fees of \$1,500.00, alimony of \$50.00 a week, support of \$35.00 a week for each of the three infant children of the marriage, and exclusive possession of the marital home.

4. The motion came on for hearing before the Hon. W. Vincent Grady, a Justice of the Supreme Court of the State of New York, on November 4, 1974 and shortly thereafter Justice Grady entered an order requiring Joseph Rabasco to make support payments of \$90.00 a month for his children and to make mortgage payments on the marital home, possession of which was awarded to Mrs. Rabasco, in addition to attorneys fees of \$250.00. (See attached order).

5. After Justice Grady's Order was entered, Mr. Rabasco lost his job at which he was making approximately

Affidavit of Joseph Rabasco (Annexed).

\$200.00 a week net and he then began receiving unemployment insurance benefits of \$95.00 a week.

6. Due to his drastic reduction in income, Mr. Rabasco was unable to comply with Justice Grady's Order in full.

7. On December 28, 1974, Joseph Rabasco received an Order to Show Cause, signed by Justice Grady on December 23, 1974, in which Mrs. Rabasco was seeking an order of contempt for Mr. Rabasco's failure to comply with Justice Grady's Order for support, counsel fees and possession of the marital home. The Order to Show Cause was made returnable before Justice Grady on January 6, 1975.

8. On January 6, 1975, Joseph Rabasco appeared before Justice Grady and asked Justice Grady to assign an attorney to represent him in the contempt proceeding as he did not have sufficient funds to retain one. Justice Grady refused stating that he could not assign a lawyer. Justice Grady then adjourned the matter so Mr. Rabasco could retain a lawyer.

9. Prior to the hearing on January 6, 1975, Mr. Rabasco had contacted over five attorneys in the Poughkeepsie area for the purpose of representation in the matter. The retainer fees required ranged from \$500.00 to \$1,200.00 which were far in excess of Mr. Rabasco's available income or assets.

10. Mr. Rabasco's only income benefits and his only assets are his home, jointly owned with his wife, and an automobile.

11. Joseph Rabasco's entire income is used to make monthly first mortgage payments of \$248.00 and second

Affidavit of Joseph Rabasco (Annexed).

mortgage payment of \$94.00 and gas and electric bills for service to the family home, food for the family and insurance on the house. By virtue of the foregoing, Joseph Rabasco is financially incapable of retaining an attorney.

12. Joseph Rabasco contends that he is in danger of imprisonment and/or fine without the benefit of assigned counsel in violation of his rights secured by the Fifth, and Fourteenth Amendments to the Constitution.

13. Joseph Rabasco further contends that Article 19 of the New York Judiciary Law is in violation of his Constitutional Rights in that there is no provision for assignment of counsel for indigent persons facing imprisonment and/or fine pursuant to the statute.

14. Joseph Rabasco is proceeding by way of an Order to Show Cause and is seeking emergency relief because he may be facing imprisonment and/or fine as a result of his wife's application for an order of contempt in *Rabasco v. Rabasco*.

15. No prior application for the relief herein sought has been made.

JOSEPH RABASCO

(Jurat)

Exhibit—Order (of Support).

At a Special Term of the Supreme Court held
in and for the County of Dutchess at the
Courthouse in Poughkeepsie, New York, on
the day of November, 1974

PRESENT:

HON. W. VINCENT GRADY,
Justice,

STATE OF NEW YORK
SUPREME COURT : DUTCHESS COUNTY

Index No. 3087/1974

GLADYS RABASCO,

Plaintiff,

—against—

JOSEPH RABASCO,

Defendant.

A motion having been made for temporary alimony,
child support, counsel fees and exclusive possession of the
marital premises, and due notice of this motion having
been given;

Now, upon reading and filing the Notice of Motion
dated the 14th day of October, 1974, the affidavits of
GLADYS RABASCO and IRA A. PERGAMENT, Esq., sworn to the
14th day of October, 1974, and the papers submitted by
JOSEPH RABASCO, in opposition thereto, and due delibera-
tion having been had;

Exhibit—Order (of Support).

Now, on motion of IRA A. PERGAMENT, Esq., attorney for
the plaintiff, it is;

ORDERED, that the plaintiff is awarded the sum of \$90.00
per week for the support and maintenance of the three
infant children of the marriage, payments to commence as
of the date of the decision, November 6th, 1974, and to
made on Friday of each week thereafter, and it is further,

ORDERED, that the defendant, JOSEPH RABASCO, is to con-
tinue making payments of mortgage interest and amortiza-
tion and payments of realty taxes pending the trial of
this action, and it is further,

ORDERED, that the plaintiff have temporary exclusive
possession of the marital residence, and it is further,

ORDERED, that plaintiff have temporary custody of the
children of the marriage and defendant is granted rights
of visitation which shall be agreed upon between the
parties and in the event that the parties are unable to
agree, the Court, upon application, will fix visitation
rights, and it is further,

ORDERED, that the plaintiff receive the sum of \$250.00
for counsel fees which shall be paid within 30 days after
service of a copy of the Order herein with Notice of Entry
thereon, and it is further,

ORDERED, that plaintiff shall have leave to apply to the
trial Court for additional counsel fees, and it is further,

ORDERED, that plaintiff is not entitled to temporary ali-
mony pending the trial of this action.

Dated: Poughkeepsie, N.Y.

November , 1974.

ENTER,

s/ W. VINCENT GRADY
Justice of the Supreme Court

Opinion (Justice Grady).

STATE OF NEW YORK
SUPREME COURT : DUTCHESS COUNTY

INDEX No. 1974/3087

Motion Date—Nov. 4, 1974

Motion Cal. #43

GLADYS RABASCO,

Plaintiff,

—against—

JOSEPH RABASCO,

Defendant.

GRADY, J.

Motion for temporary alimony, child support, counsel fees and exclusive possession of the marital premises is disposed of as follows:

No award is made for temporary alimony since it appears that the plaintiff is both employed and self-employed part-time and has sufficient earnings to maintain herself pending the trial of this action.

Plaintiff is awarded the sum of \$90.00 per week for the support and maintenance of the three (3) infant children of the marriage, payments to commence as of the date of this decision and to be made on Friday of each week.

It appears that the defendant has been paying the realty taxes, and mortgage interest and amortization on the marital residence and defendant is directed to continue making such payments pending the trial of this action. Plaintiff is awarded temporary exclusive possession of the marital residence.

Opinion (Justice Grady).

Plaintiff is awarded temporary custody of the children of the marriage and defendant is granted rights of visitation which shall be agreed upon between the parties and in the event that the parties are unable to agree, the Court, upon application, will fix visitation rights.

Plaintiff is awarded the sum of \$250.00 for counsel fees which shall be paid within (30) days after service of a copy of the order herein with notice of entry thereon. Plaintiff shall have leave to apply to the trial court for additional counsel fees.

Submit order on notice.

Dated: November 6, 1974.

Vincent Grady

VINCENT GRADY, J. S. C.

To: IRA A. PERGAMENT, Esq.

Attorney for Plaintiff

2 Cannon Street

Poughkeepsie, New York 12601

JOSEPH RABASCO

3 Midge Drive

Wappingers Falls, New York

Exhibit—Order to Show Cause, State Court.

At a Special Term of the Supreme Court held in and for the County of Dutchess at the Courthouse in the City of Poughkeepsie, New York, on the 23 day of December, 1974.

Present: HON. W. VINCENT GRADY, Justice.

STATE OF NEW YORK

SUPREME COURT
DUTCHESS COUNTY

Index No. 3087/1974

GLADYS RABASCO,

Plaintiff,

against

JOSEPH RABASCO,

Defendant.

On reading and filing the annexed affidavits of GLADYS RABASCO and IRA A. PERGAMENT, Esq., both verified the 19th day of December, 1974, the Order made herein by the HON. W. VINCENT GRADY dated November 6th, 1974 and entered December 3, 1974, a copy of which is hereto annexed and marked Exhibit "A", and upon all the other papers and proceedings had herein, and it appearing to the Court that the defendant JOSEPH RABASCO is in default in the payment of the sum of \$630.00 alimony and child support, which became due under the terms of the said Order, a further sum for the payment of mortgage principal and interest for the month of December, 1974, and that the defendant JOSEPH RABASCO has not given the plain-

Exhibit—Order to Show Cause, State Court.

tiff GLADYS RABASCO exclusive possession of the marital residence under the terms of the said order, and it appearing presumptively to the satisfaction of the Court that the defendant JOSEPH RABASCO has given no security and that sequestration proceedings have not been instituted because they would be ineffectual and that the rights and remedies of the plaintiff GLADYS RABASCO have been impaired, impeded, prejudiced and defeated.

Let the defendant JOSEPH RABASCO, or his attorney, show cause before one of the Justices of this Court at a Special Term thereof, to be held at the Dutchess County Courthouse in Poughkeepsie, New York, on the 6 day of January, 1975, at 9:30 o'clock in the forenoon of said day or as soon thereafter as counsel can be heard, why an Order should not be made and entered:

(a) Adjudging the defendant JOSEPH RABASCO to be in contempt of this Court for his failure to comply with the terms of the Order of this Court filed and entered by the HON. W. VINCENT GRADY on December 3rd, 1974, in that the defendant JOSEPH RABASCO has defaulted in the payments of temporary alimony and child support in the sum of \$630.00 beginning as of November 6th, 1974, the date payments were directed to commence pursuant to said Order, and ending December 13th, 1974, the date of the within motion; and in that he has further defaulted in the payment of mortgage principal and interest for the month of December, 1974, and in that he has further defaulted by not giving exclusive possession of the marital residence to the plaintiff under said Order, and punishing the defendant JOSEPH RABASCO therefor for said contempt, and,

(b) Awarding the plaintiff GLADYS RABASCO a suitable counsel fee for bringing on and prosecuting these proceedings, and,

(c) For such other and further relief as to the Court may seem just and proper.

Exhibit—Order to Show Cause, State Court.

Sufficient reason appearing therefor, let service of a certified copy of this Order and of the exhibits upon which it is based, on the defendant JOSEPH RABASCO, on or before the 29 day of Dec. 197 , at 6 o'clock in the afternoon of said day, be deemed sufficient service.

Dated: Poughkeepsie, N.Y.
December 23, 1974.

ENTER,

W. VINCENT GRADY
Justice of the Supreme Court

Affidavit in Opposition of Thomas A. Reed.

[SAME TITLE]

THOMAS A. REED, being duly sworn, deposes and says:

1. That I am an attorney duly admitted to practice law in the State of New York and duly admitted and qualified to practice law in the United States District Court for the Southern District of New York.

2. That I make this Affidavit in opposition to the motion of the plaintiffs Richard Russell, Jr., Helen Thorpe and Robert Harrell to intervene as party plaintiff's and in opposition to the motion of plaintiffs Leslie Nameth and McKinley Humes for a preliminary injunction, temporary restraining order and intervention and their Notice to Amend Affidavits, said opposition made on behalf of the defendants Herbert H. Redl, d/b/a H. H. Redl's Auto Body Works, Alexander Paulsen and Douglas Paulsen, d/b/a Hudson View Park Company, George T. C. Way, M.D., and George Montgomery, Jr., M.D.

3. That I oppose the motion of the plaintiffs' Richard Russell, Jr., Helen Thorpe and Robert Harrell on the grounds that the facts of their cases, the legal claims they make, and their claims for relief are not substantially identical to those of the other named plaintiffs, and particularly oppose the request that the affidavits of said defendants be deemed verified pleadings inasmuch as such they are not complete, the affidavit of the plaintiff Russell does not set forth all of the facts as hereinafter more fully alleged and the Affidavit of the plaintiff Harrell is not made by the real party in interest seeking to intervene in this action.

Affidavit in Opposition of Thomas A. Reed.

4. That I oppose the said motion to intervene for more specific reasons as follows:

a) The intervening plaintiffs and each of them afforded ample opportunity, upon notice, to attend and appear before the Court and to plead their indigency, if that be the case.

b) Plaintiff Russell was apprised of his right to counsel in these proceedings and was in fact represented by counsel therein, namely Mid-Hudson Valley Legal Services Project, by one David Effron, Esq., who contacted your affiant on March 26, 1974, and so stated he represented said plaintiff and about whom your affiant on two other occasions discussed with Mr. Effron his representation of said plaintiff.

c) That the plaintiff were in fact able to pay the fines imposed, which fine has not been received by the defendant Hudson View Park Company and which fines as to plaintiffs Russell, Thorpe and Harrell will be or have been applied against lawful judgements obtained against each of them by the defendants.

d) That the prayers for relief in each of the plaintiffs' affidavits requests judgements in the sum of \$100,000.00 but in no instance does it state against whom the judgement is sought; that the first decretal provision of the Order to Show Cause signed by Hon. Thomas P. Griesa on January 8, 1975, did not restrain George Montgomery, Jr., M.D. from imprisoning anyone and said defendant has done no act violating said order nor any act violative of the rights of the plaintiff McKinley Humes and he prays for a judgement against said defendants should be dismissed as no damages could have arisen therefrom.

e) That the individual defendants, by and through their attorneys, did not and have not fined, imprisoned or otherwise violated the constitutional rights of the plaintiffs or

Affidavit in Opposition of Thomas A. Reed.

any of them and, have merely invoked the laws of the State of New York in an attempt to enforce the collection of sums due them that had been reduced to judgement and, therefore, no judgement should be allowed against them or any of them, and this proceeding should be dismissed as to each one of them.

f) That the prayers for relief in the Affidavits of the intervening plaintiffs McKinley Humes and Leslie Nameth as to seeking judgements against the respective defendants Montgomery and Redl are inconsistent with the relief sought and requested in the Notice of Motion and the Motion and the same should be disregarded or otherwise dismissed, particularly in that said defendants did not arrest, imprison, or otherwise violate the rights of the said plaintiffs or either of them, and have not or could not have been damaged thereby, and based upon the foregoing because Court lacks subject matter jurisdiction as to said defendants and they should not be added as party defendants.

5. That as to the motion to intervene on behalf of the plaintiffs Russell, Thorpe and Harrell, and to add defendants' Alexander and Douglas Paulsen, George T. C. Way, M.D. and Herbert H. Redl, in that said defendants did no acts involving the arrest, imprisonment or otherwise violative of the rights of the plaintiffs and, therefore, did not damage said plaintiffs, and in that the prayers for relief in the respective affidavits of the said plaintiffs otherwise allege damages in each case in a sum less than \$10,000.00 the Court lacks subject matter jurisdiction as to said defendants and they, therefore, should not be added as parties defendant, and the motion as to them should be dismissed.

WHEREFORE, deponent prays that this Court in all respects deny the motions of the intervening plaintiffs as re-

Affidavit in Opposition to Order to Show Cause.

gards the defendants Montgomery, Way, Redl, and Alexander Paulsen and Douglas Paulsen, that said defendants not be added parties defendant, and that the relief prayed for in the respective intervening plaintiffs' affidavits be denied.

Thomas A. Reed
THOMAS A. REED

(Jurat)

Affidavit in Opposition to Order to Show Cause.

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

STATE OF NEW YORK }
COUNTY OF DUTCHESS } ss.:

CHARLES P. MORROW, Esq., being duly sworn, deposes and says:

1. He is an attorney at law duly admitted to practice in the State of New York and a partner in the law firm of Gilday and Morrow, attorneys for Domestic Finance, a proposed defendant in the above captioned action.
2. That as attorney of record in a previous action of Domestic Finance against Joanne Harvard, a proposed intervenor in this action, he is familiar with the facts and circumstances out of which the present action was evolved.

Affidavit in Opposition to Order to Show Cause.

3. That he has read the affidavit of Joanne Harvard, the proposed intervenor, in support of her order to show cause to intervene in this action and for injunctive relief, and that he makes this affidavit in answer to her order to show cause and in support of the relief requested by the proposed defendant, Domestic Finance, for judgment against said Joanne Harvard in the event that she is permitted to intervene in this action, as demanded in the counterclaim hereinafter interposed in this affidavit.

4. On March 20, 1974, default judgment was entered in the City Court of Poughkeepsie for Domestic Finance Corporation against Joanne Harvard in the amount of \$413.40. A transcript of the same was duly filed with the County Clerk of Dutchess County. Joanne Harvard had been properly served in the action, but had failed to appear.

5. An information subpoena was duly served upon Joanne Harvard on or about May 1, 1974. She failed to appear or answer questions in the subpoena. An order to show cause was issued from the County Court of Dutchess County to show cause why said Joanne Harvard should not be punished for contempt. It was duly served upon her on or about July 29, 1974; and she failed to appear thereafter. A judgment of contempt and fine order in the amount of \$270.00 plus Sheriff's fees was subsequently signed by Judge Juidice of the County Court of Dutchess County on August 30, 1974, a copy of which is attached hereto and made a part hereof. The order was duly served on Joanne Harvard on September 5, 1974 as is shown by the affidavit of service, a copy of which is attached hereto. She made no payments as required by the said order, see the affidavit of Noncompliance attached hereto and made a part hereof; and therefore a Commitment Order was obtained from the said County Court and

Affidavit in Opposition to Order to Show Cause.

signed by Judge Juidice on September 23, 1974, a copy of which is attached hereto and made a part hereof: The Commitment Order was transmitted to the Sheriff of Dutchess County, who pursuant thereto, arrested Joanne Harvard on November 21, 1974. Her mother, on her behalf, paid the sum of \$294.25 including Sheriff's fees, that date, and Joanne Harvard was released from custody. Attached hereto and made a part hereof is the affidavit of the Sheriff of Dutchess County attesting to his execution of the Commitment Order.

6. By her affidavit, Joanne Harvard does not question the validity of the default judgment taken against her. By paragraphs 5 through 13, in her affidavit, she admits that she failed to appear for the information subpoena, the hearing of the order to show cause, and further that she failed to obey the fine order. As has previously (Illegible)

7. The Commitment Order was issued ex parte only after said Joanne Harvard ignored the prior proceedings though duly served with notice. Prior to the issuance of the Commitment Order, the proposed plaintiff herein had every opportunity to answer the charge of contempt and to challenge the amount of the fine imposed by the County Court, contrary to the allegations made in paragraph 17 of the proposed plaintiff's affidavit.

8. The proposed plaintiff, subsequent to her lawful imprisonment, has made voluntary payments of only \$25.00 on the obligation arising from the original judgment taken against her for \$413.40.

9. With reference to paragraph 22 of the moving affidavit, a letter dated December 20, 1974, was sent to Joanne Harvard in which it was stated that further legal action

Affidavit in Opposition to Order to Show Cause.

would be taken if she did not make her weekly payments. There was no threat express or implied in the letter that Joanne Harvard would be imprisoned.

10. On November 22, 1974, Maggie Ruth Harvard, mother of the proposed plaintiff, visited the law office of Gilday and Morrow and left \$10.00 with an individual in the office to be applied to the debt of the proposed plaintiff in the event she defaulted in the future on her payments. Mrs. Harvard asked to be notified by telephone on the occasions when her daughter defaulted so that she could make the payments for her daughter. This arrangement was made at her request.

11. On or about January 6, 1975, a phone conversation was had between Maggie Ruth Harvard, and an individual of this office in which Ms. Harvard terminated her arrangement to make payments for her daughter. Contrary to the allegation made in paragraph 23 of the moving affidavit, at no time was Ms. Harvard told that her daughter would be imprisoned again if she did not make the weekly payment.

12. With reference to paragraph 24 of the moving affidavit, your deponent did not state to said Joanne Harvard in any conversation that he had no other alternative but to imprison her again if she did not make the payments. No such threat was ever made to my knowledge by any individual in this office, including myself.

13. The allegations made in paragraph 25 of the moving affidavit that said Joanne Harvard is in danger of repeated incarceration is without merit since at this time there are no contempt proceedings pending against her. Further, the ground listed by the proposed plaintiff for the motion that she is in dire need of immediate relief

Affidavit in Opposition to Order to Show Cause.

since she has been threatened with imprisonment within the immediate future by the defendants, is groundless and without foundation in fact.

14. Since there are no legal proceedings pending in which a fine could be imposed upon the proposed intervenor or in which she could be imprisoned, the relief requested in paragraph (c) of the order to show cause for a preliminary injunction enjoining the defendants named therein from imposing a fine and/or imprisoning her, should be denied in total for mootness.

15. Your deponent on behalf of Domestic Finance denies the legal conclusions drawn by said Joanne Harvard in paragraphs of her affidavit designated 15, 16, 17, 18, 19. She was neither wrongfully imprisoned nor wrongfully deprived of the \$294.25 in violation of the U.S. Constitution.

16. Based upon the foregoing her request in her affidavit for judgment in the amount of \$100.00 for her unlawful imprisonment must be denied.

17. Based upon the foregoing, her request for judgment in the amount of \$294.25 against defendant Domestic Finance for the imposition of the aforesaid fine must be denied.

18. That Joanne Harvard has voluntarily paid \$25.00 on the default judgment hereinbefore mentioned in the amount of \$413.40 recovered against her in favor of Domestic Finance.

19. That said Joanne Harvard has failed to pay the amount of \$388.40, though duly demanded, and continues to owe that amount plus interest.

Affidavit in Opposition to Order to Show Cause.

20. By virtue of the foregoing said Domestic Finance has been damaged in the amount of \$388.40.

21. Your deponent on behalf of Domestic Finance prays that this court:

(1) Deny to said Joanne Harvard her request for a preliminary injunction made in paragraph (c) of the order to show cause;

(2) Deny her demand for judgment in the amount of \$100.00 for unlawful imprisonment;

(3) Deny her demand for judgment in the amount of \$294.25 for the fine imposed upon her;

(4) Enter judgment against said Joanne Harvard in favor of Domestic Finance in the amount of \$388.40, and/or that it have judgment against any recovery in favor of said Joanne Harvard, to the extent of the amount of \$388.40, the amount of the counterclaim herein.

s/ CHARLES P. MORROW
Charles P. Morrow

(Jurat)

Exhibit—Return on Commitment Order.

STATE OF NEW YORK }
 COUNTY OF DUTCHESS } ss.:

#15645

Domestic Finance

Plaintiff

vs:

JOANN HARVARD

Defendant

I, LAWRENCE M. QUINLAN, Sheriff of Dutchess County, New York, do hereby certify and return that on the 26th. day of September, 1974, the Commitment Order in the above entitled action was received at the Dutchess County Sheriff's Office, Poughkeepsie, New York.

I further certify and return that on the 21st. day of November, 1974 at 78 Academy Street, City of Poughkeepsie, Dutchess County, New York, under and by virtue of the Commitment Order received by me on the 26th. day of September, 1974 in the above entitled action I arrested the said defendant JOANN HARVARD, and at the same time and place delivered to her a copy of the Commitment Order upon which the same was granted to her.

I further certify and return that on the 21st. day of November, 1974, the said defendant paid to Lawrence M. Quinlan, Sheriff of Dutchess County, New York, the full amount of the Commitment Order of \$294.25. Thereupon the said defendant was discharged from arrest by Lawrence M. Quinlan, Sheriff of Dutchess County, New York.

LAWRENCE M. QUINLAN

Exhibit—Commitment Order.

LAWRENCE M. QUINLAN
 SHERIFF, DUTCHESS COUNTY

Sworn to before me this
 26th day of November, 1974.

JESSIE J. PONTE
 Notary Public, Dutchess County

JESSIE J. PONTE
 Notary Public, State of New York
 Qualified in Dutchess County
 Commission Expires March 30, 1975

Exhibit—Commitment Order.

At a Special Term, Part COUNTY COURT
 of the STATE OF NEW YORK County of
 DUTCHESS, held at the Courthouse, No.
 POUGHKEEPSIE, NEW YORK on the 23rd day
 of September, 1974.

Index No. 74/2182
 15645

Present Hon. JOSEPH JIUDICE, Justice

DOMESTIC FINANCE

Plaintiff(s)

against

JOANN HARVARD

Defendant(s)

Exhibit—Commitment Order.

On reading the—subpoena—dated May 1st 1974 which directed JOANN HARVARD to APPEAR AND ANSWER FOR EXAMINATION AND SUPPLEMENTARY PROCEEDINGS. the affidavit of VIRGINIA TRAVER verified May 1st 1974 showing due service thereof. the order to show cause why JOANN HARVARD should not be punished for contempt of court, dated JULY 22nd 1974, the affirmation of CHARLES P. MORROW, Esq. dated JULY 19th 1974 in support of said order; the affidavit of VIRGINIA TRAVER dated JULY 29th 1974 showing due service of a certified copy of said order to show cause,

AND on reading and filing the order entered herein on AUGUST 30th 1974 fining the said the sum of \$270 and directing the payment of said fine in instalments of \$10 each commencing on SEPTEMBER 9th 1974 and on reading and filing the affidavit of GEORGE TRAVER verified 9/5/74 showing the service of a certified copy of said order with notice of entry thereof on said JOANN HARVARD and the AFFIDAVIT OF NON COMPLIANCE dated SEPTEMBER 16th 1974 showing that said order has not been complied with.

NOW, ON MOTION OF GILDAY & MORROW, Esqs. attorney(s) for DOMESTIC FINANCE judgment creditor, it is

ORDERED, that the motion to punish said JOANN HARVARD for contempt is granted; and it is

ADJUDGED, that he is guilty of contempt of Court in having willfully disobeyed said order—AUGUST 30th 1974 in that he failed to comply pursuant thereto, and that he has failed to satisfactorily excuse or explain said contempt; it is

ADJUDGED, that his misconduct was calculated to and actually did defeat, impair, impede and prejudice the rights and remedies of the judgment creditor herein; it is

Exhibit—Commitment Order.

ADJUDGED, that he has failed to purge himself of said contempt and has failed to pay the fine imposed by said order entered on AUGUST 30th 1974 herein imposed on him for his said contempt, to wit, the total sum of \$270; it is therefore

ORDERED, that without further notice to said JOANN HARVARD—the Sheriff of any County within the State of New York—wherein he may be apprehended shall forthwith arrest him without further process, and commit him to the County Jail of said County and hold him in close custody until he shall have paid said fine of \$270 together with said Sheriff's fees and the disbursements on the execution of this order, or is discharged according to law.

ENTER

JOSEPH JUIDICE
Justice of the County Court

CERTIFICATION

The undersigned attorney certifies that the within order has been compared by the undersigned with the original and found to be a true and complete copy.

Dated:

.....

The name signed must be printed beneath

Attorney(s) for Judgment Creditor

Exhibit—Commitment Order.

Index No.

COUNTY COURT
COUNTY OF DUTCHESS

DOMESTIC FINANCE

against

JOANN HARVARD

PLAINTIFF

DEFENDANT

COMMITMENT ORDER

GILDAY & MORROW, ESQS.

Attorney(s) for Judgment Creditor

Office and Post Office Address

40 Cannon Street
Poughkeepsie, New York
(914) 454-6480DUTCHESS COUNTY
SHERIFF

SEP 26 3 51 PM '74

Amount	250.00
Cost	20.00
Service Fees	7.50
Mileage Fees	1.00
Poundage	13.50
Affidavit25
Total
Service Fees
Mileage Fees
State Fees
Mun. Fees
Previous Fees
C&D	2.00
Total	294.25

Exhibit—Affidavit of Non-compliance.

COUNTY COURT : STATE OF NEW YORK

COUNTY OF DUTCHESS

INDEX No. 74/2182

DOMESTIC FINANCE,

Plaintiff,

against

JOANN HARVARD,

Defendant.

STATE OF NEW YORK }
COUNTY OF DUTCHESS } ss.:

CHARLES P. MORROW, being duly sworn, deposes and says:

That he is one of the attorneys for the plaintiff herein and makes this affidavit in support of a commitment order against the defendant.

That on the 5th day of September, 1974, an order was issued fining the defendant herein. That the said order provided that payments were to commence on the 9th day of September, 1974, and continuing each week thereafter until said total fine is paid.

That said order was duly served as appears in the affidavit of GEORGE TRAVER attached hereto and made a part hereof, and that the said defendant has not complied with said order by making any payments whatsoever.

WHEREFORE, it is respectfully prayed that the commitment issue.

CHARLES P. MORROW
CHARLES P. MORROW, Esq.

(Jurat)

Exhibit—Affidavit of Service of Imposing Fine Order.

COUNTY COURT
COUNTY OF DUTCHESS

DOMESTIC FINANCE

Plaintiff(s)

against

JOANN HARVARD

Defendant(s)

STATE OF NEW YORK, COUNTY OF DUTCHESS ss.:

GEORGE TRAVER being duly sworn, deposes and says:
that deponent is not a party to this action, is over 18
years of age and resides at Poughkeepsie, N.Y. That on
Sept. 5, 1974 at No. 78 Academy St., Poughkeepsie, N.Y.,
10:45 AM

CHECK APPLICABLE BOX AND FILL IN FORM

INDIVIDUAL deponent served the within subpoena on
1. ☒ Joann Harvard the witness therein named,
by delivering a true copy thereof to witness
personally and at the same time paying (or
tendering) in advance \$, the au-
thorized travelling expenses and one day's
witness fee: deponent knew the person so
served to be the witness described in said
subpoena.

CORPORATION deponent served the within subpoena on
2. ☐ a
corporation, the witness therein named, by
delivering a true copy thereof to

Exhibit—Affidavit of Service of Imposing Fine Order.

personally, whom deponent
knew to be the
of said corporation, and at the same time
paying (or tendering) in advance \$,
the authorized traveling expenses and one
day's witness fee: deponent knew the cor-
poration so served to be said corporate
witness.

ALTERNATIVE
METHOD

3. ☐

witness' actual place of business—dwelling
place—usual place of abode, deponent served
the within subpoena upon the witness
strike out either (a) or) (b)
(a) by delivering thereat, a true copy
thereof to
a person of suitable age and discretion
(b) by affixing a true copy thereof to the
door thereof, deponent was unable, with due
diligence to find witness or a person of suit-
able age and discretion thereat, having
called there

on 19.... at A.M.
P.M.
on 19.... at A.M.
P.M.
on 19.... at A.M.
P.M.
on 19.... at A.M.
P.M.

deponent also enclosed a copy of same in a
postpaid sealed wrapper properly addressed
to said witness at witness' last known resi-
dence, No.

and deposited said wrapper

Exhibit—Affidavit of Service of Imposing Fine Order.

in—a post office—official depository under the exclusive care and custody of the United States Postal Service within New York State.

DESCRIPTION USE WITH 1 or 3a
☒ Deponent describes the individual served as follows:
☐ Male
☒ Female
☐ White Skin
☒ Black Skin
☐ Yellow Skin
☐ Brown Skin
☐ Red Skin
☒ Black Hair
☐ Brown Hair
☐ Blond Hair
☐ Gray Hair
☐ Red Hair
☐ White Hair
☐ Balding
☐ 14-20 Yrs.
☒ 21-35 Yrs.
☐ 36-50 Yrs.
☐ 51-65 Yrs.
☐ Over 65 Yrs.
☐ Under 5'
☒ 5'0"-5'3"
☐ 5'4"-5'8"
☐ 5'9"-6'0"
☐ Over 6'
☐ Under 100 Lbs.
☒ 100-130 Lbs.
☐ 131-160 Lbs.
☐ 161-200 Lbs.

Exhibit—Order Imposing Fine.

☐ Over 200 Lbs.

Other identifying features:

Sworn to before me on 9-5-74
 (ILLEGIBLE)

GEORGE TRAVER
 Print name beneath signature
 GEORGE TRAVER

(Jurat)

Exhibit—Order Imposing Fine.

At a Special Term Part of the COUNTY Court of the STATE OF NEW YORK held in and for the County of DUTCHESS at the Court House thereof in the on the 30th day of August, 1974.

Present: HON. JIUDICE, Justice.

DOMESTIC FINANCE,

Plaintiff,

against

FRANKLIN GREEN AND JOANN HARVARD,

Defendant.

On reading the—subpoena—order—restraining notice—dated May 1st 1974 which directed JOANN HARVARD to ap—

Exhibit—Order Imposing Fine.

pear and answer questions in Subpoena, the affidavit VIRGINIA TRAVER verified the 1st day of May, 1974 showing due service thereof.

the order to show cause why JOANN HARVARD should not be punished for contempt of court, dated the 22nd day of July 1974, the affirmation in support of said order; the affidavit of VIRGINIA TRAVER dated the 29th day of July 1974

Now ON MOTION of the attorney(s) for the judgment creditor, it is

ORDERED that this motion to punish for contempt is granted and JOANN HARVARD is adjudged guilty of contempt of court in having wilfully disobeyed said—subpoena—order—restraining notice—in that she failed to comply herewith and failed to satisfactorily excuse or explain said contempt; and it is

ADJUDGED that said misconduct was calculated to and actually did defeat, impair, impede and prejudice the rights and remedies of the judgment creditor; and it is

ORDERED that JOANN HARVARD be and hereby is fined for said contempt the sum of \$250 together with \$20 costs of these proceedings making a total of \$270 to be paid to the judgment creditor at the office of the attorney(s) for the judgment creditor at 40 Cannon Street, Poughkeepsie, New York in installments of \$10 commencing on week received this order 19 and continuing on each week thereafter until said total fine is paid and when paid, \$270 thereof shall be applied toward the satisfaction of the judgment herein, and it is

Exhibit—Order Imposing Fine.

ORDERED that a copy of this order be served upon JOANN HARVARD personally, and it is

ORDERED that upon failure to pay said fine as aforesaid, the entire amount imposed shall immediately fall due and a commitment order issue without further notice to the said person directed to the City Sheriff of the City of New York or to the Sheriff of any county within the State of New York wherein said person may be apprehended, commanding him forthwith to arrest said person without further process, and commit her to the county jail of said county and hold her in close custody until she shall pay said fine or is discharged according to law.

ENTER

s/ JOSEPH JIUDICE
Justice of the County Court*

CERTIFICATION

The undersigned attorney certifies that the within order has been compared by the undersigned with the original and found to be a true and complete copy.

Dated:

CHARLES P. MORROW
The name signed must be printed beneath
Attorney(s) for Judgment Creditor

* On margin of order: "DEFAULT IN COMPLIANCE WITH THE PROVISIONS OF THIS ORDER MAY SUBJECT PARTY NAMED TO IMPRISONMENT".

Exhibit—Order Imposing Fine.

GILDAY & MORROW
Counsellors at Law
40 Cannon Street
Poughkeepsie, N. Y. 12601

STATE OF NEW YORK

COUNTY COURT : DUTCHESS COUNTY

INDEX NUMBER 1974/2182

DOMESTIC FINANCE,

Plaintiff

against

JOANN HARVARD,

Defendant

MOTION TO OBTAIN ORDER TO SHOW CAUSE

GRANTED

NO OPPOSITION

SUBMIT ORDER

DATE AUGUST 27, 1974

HON. JOSEPH JIUDICE
Dutchess County Judge

CC: GILDAY & MORROW, ESQ.
40 Cannon Street
Poughkeepsie, New York

JOANN HARVARD
78 Academy Street
Poughkeepsie, New York
SUBMITTED TO COUNTY
CLERK FOR FILING
Date 8-28-74

**Opinion and Order Convening Three-Judge Court,
387 F.Supp. 630.**

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

Appearances:

Mid-Hudson Valley Legal Services Project (Monroe County Legal Assistance Corp.), Poughkeepsie, New York and Greater Up-State Law Project, Rochester, New York (John D. Gorman, Jane E. Bloom, K. Wade Eaton and Rene H. Reixach, Jr., of counsel), for Plaintiffs.

Louis J. Lefkowitz, Attorney General of the State of New York, New York, New York (A. Seth Greenwald, Asst. Attorney General, of counsel), for Defendants Juicide and Aldrich and Pro Se pursuant to New York Executive Law § 71.

CANNELLA, D.J.:

This civil rights action, which is brought pursuant to 42 U.S.C. § 1983, asks that the Court declare unconstitutional and enjoin the enforcement of a panoply of sections contained in Article 19 of the New York Judiciary Law (New York Judiciary Law §§ 756, 757, 765, 767, 769, 770-75) as being in derogation of the due process and equal protection clauses of the Fourteenth Amendment. It is presently before the Court on plaintiff's motion to convene a three-judge court pursuant to 28 U.S.C. §§ 2281 and 2284 and upon the defendant's cross-motion to dismiss the complaint for failure to state a claim upon which relief can be granted, Fed.R. Civ.P. 12(b)(6), upon a predicate finding by the Court that no substantial constitutional issue is

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raised. As the Court is of the view that the plaintiffs have satisfied the prerequisites for convening a three-judge court, their motion is hereby granted and, of course, the defendants' cross-motion is hereby denied.

The contours of the statutory scheme here at issue were recently well stated by one commentator. Alderman, *Imprisonment for Debt: Default Judgments, The Contempt Power & The Effectiveness of Notice Provisions in the State of New York*, 24 Syracuse L. Rev. 1217, 1222-24 (1973).

A money judgment is a special kind of debt which affords the judgment creditor remedies not available to other creditors. However, even money judgments do not collect themselves. In order to enforce his judgment the creditor either must locate and attach the debtor's assets, or, assuming no attachable assets, compel payment from the debtor himself.

In order to assist the judgment creditor in his search for assets, New York allows the judgment creditor to compel the judgment debtor to disclose the nature, value and location of all his assets. Section 5223 of the New York Civil Practice Law & Rules (CPLR) provides that: "At any time before a judgment is satisfied or vacated, the judgment creditor may compel disclosure of all matter relevant to the satisfaction of the judgment." Section 5223 further provides that the disclosure shall be effectuated "by serving upon any person a subpoena [F]ailure to comply with the subpoena is punishable as a contempt of court."

Although three types of subpoenas are statutorily authorized, the most commonly used forms are (1) the subpoena requiring attendance of the debtor for the taking of a deposition, and (12) the information

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subpoena, which is accompanied by written questions to be answered and returned by the debtor. Upon service of either of these subpoenas the judgment debtor must, under penalty of contempt, comply with its directions. Assuming proper service by the judgment creditor and compliance by the judgment debtor, assets will be disclosed and the judgment satisfied. Alternatively, a disclosure of no attachable assets will temporarily appease the judgment creditor or force him to look elsewhere to satisfy the judgment. In the event that the judgment debtor fails to comply with the judgment creditor's subpoena, however, the CPLR provides that the debtor may be found in contempt and punished accordingly. The procedures that the judgment creditor must follow to have the recalcitrant debtor held in contempt are found in the judiciary law. [The statutes here challenged.] While the court has the power to punish the judgment debtor summarily, the practice generally followed in the case of nondisclosure is the issuance of a show cause order and a subsequent hearing to determine the guilt or innocence of the alleged contemnor.

In the event that the judgment debtor fails to appear at the show cause hearing he will be adjudged in contempt in absentia, the burden of proof having shifted to the debtor to show cause why he should not be held in contempt. After return of the show cause order and a determination that the judgment debtor is in contempt, the debtor may be fined an amount sufficient to indemnify the aggrieved creditor, or to pay him an amount not exceeding costs plus \$250. Immediately thereafter a commitment order will issue, directing that the judgment debtor stand committed to the local jail until such time as the fine is paid. The judgment debtor may then remain incarcerated,

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without the assignment of counsel or judicial review, for up to 90 days. The fine, when paid, is remitted directly by the court to the judgment creditor and is applied to the debt. [Footnotes omitted.]¹

As regards the precise factual allegations giving rise to the instant controversy the Court can be brief, as the facts advanced are squarely within the pattern of statutory enforcement suggested by Alderman, *supra*. Each plaintiff (as well as the proposed plaintiff-intervenor) is a judgment debtor who has failed to respond to or comply with a post-judgment discovery subpoena. Each has been served with an order to show cause requiring that he demonstrate why he should not be adjudged in contempt of court for failure to obey such subpoena and each has failed to appear at the show cause hearing. Accordingly, each was adjudged in contempt of court and, upon failure to pay the fine specified by the County Court in its contempt order, has been incarcerated or subjected to an immediate threat of incarceration pursuant to an *ex parte* commitment order issued in compliance with § 756 of the Judiciary Law.

With this statutory and factual framework in mind, we turn to consider plaintiffs' motion to convene a three-judge court pursuant to 28 U.S.C. §§ 2281, 2284. As Judge Lasker has recently stated,

[t]he motion should be granted if the complaint at least formally alleges a basis for equitable relief and raises a substantial constitutional question (*Idlewild Bon Voyage Liquor Corp. v. Epstein*, 370 U.S. 713, 82 S.Ct. 1294, 8 L. Ed. 2d 794 (1962)), if it attacks a state statute's general application and names a state officer as a defendant (*Ince v. Rockefeller*, 290 F. Supp. 878, 881 (S.D.N.Y. 1968)).^{1A}

Sugar v. Curtis Circulation Co., 377 F.Supp. 1055, 1061

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(S.D.N.Y. 1974). See also, *Nieves v. Oswald*, 477 F.2d 1109, 1111-12 (2 Cir. 1973); *227 Book Center, Inc. v. Codd*, 381 F.Supp. 1111, 1113 (S.D.N.Y. 1974); *Johnson v. Rockefeller*, 58 FRD 42, 48 (S.D.N.Y. 1973). The only prerequisite to the convening of a three-judge court which the Attorney General alleges has not been met by plaintiffs, is whether this case gives rise to a substantial constitutional question.² We now turn to consider such issue.

A determination of substantiality in the present context "hangs on whether or not the constitutional issue presented is foreclosed by decisions of the Supreme Court which are analogous to the case at hand" and, as such, "[t]he 'foreclosure' hurdle is not a high one." *Sugar v. Curtis Circulation Co.*, 377 F.Supp. at 1061. The doctrine of "substantiality" was recently reviewed by the Supreme Court in *Hagans v. Lavine*, 415 U.S. 528, 536-38 (1974) (in which the Court quoted extensively from its earlier opinion in *Goosby v. Osser*, 409 U.S. 512 (1973)):

Over the years this Court has repeatedly held that the federal courts are without power to entertain claims otherwise within their jurisdiction if they are "so attenuated and unsubstantial as to be absolutely devoid of merit," *Newburyport Water Co. v. Newburyport*, 193 U.S. 561, 579 (1904); "wholly insubstantial," *Bailey v. Patterson*, 369 U.S. 31, 33 (1962); "obviously frivolous," *Hannis Distilling Co. v. Baltimore*, 216 U.S. 285, 288 (1910); "plainly unsubstantial," *Levering & Garrigues Co. v. Morrin*, 289 U.S. 103, 105 (1933); or "no longer open to discussion," *McGivra v. Ross*, 215 U.S. 70, 80 (1909). One of the principal decisions on the subject, *Ex parte Poresky*, 290 U.S. 30, 31-32 (1933), held, first, that "[i]n the absence of diversity of citizenship, it is essential to jurisdiction that a substantial federal question should be presented"; second, that a three-judge court was not necessary to pass

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upon this initial question of jurisdiction; and third, that "[t]he question may be plainly unsubstantial, either because it is 'obviously without merit' or because 'its unsoundness so clearly results from the previous decisions of this court as to foreclose the subject and leave no room for the inference that the question sought to be raised can be the subject of controversy.' *Levering & Garrigues Co. v. Morrin*, *supra*; *Hannis Distilling Co. v. Baltimore*, 216 U.S. 285, 288; *McGilvra v. Ross*, 215 U.S. 70, 80."

Only recently this Court again reviewed this general question where it arose in the context of convening a three-judge court under 28 U.S.C. § 2281:

"'Constitutional insubstantiality' for this purpose has been equated with such concepts as 'essentially fictitious,' *Bailey v. Patterson*, 369 U.S., at 33; 'wholly insubstantial,' *ibid.*; 'obviously frivolous,' *Hannis Distilling Co. v. Baltimore*, 216 U.S. 285, 288 (1910); and 'obviously without merit,' *Ex parte Porresky*, 290 U.S. 30, 32 (1933). The limiting words 'wholly' and 'obviously' have cogent legal significance. In the context of the effect of prior decisions upon the substantiality of constitutional claims, those words import that claims are constitutionally insubstantial only if the prior decisions inescapably render the claims frivolous; previous decisions that merely render claims of doubtful or questionable merit do not render them insubstantial for the purposes of 28 U.S.C. § 2281. A claim is insubstantial only if "its unsoundness so clearly results from the previous decisions of this court as to foreclose the subject and leave no room for the inference that the questions sought to be raised can be the subject of controversy" (Citations omitted)." *Goosby v. Osser*, 409 U.S. 512, 518 (1973).

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See also, Glover v. East Harlem Block Nursery, Inc., — F.2d —, Nos. 73-1876, 73-1904 and 73-1906 (2 Cir. Nov. 1, 1974) (slip op. at 203-04); *Rosenthal v. Bd. of Educ.*, 497 F.2d 726, 729-30 (2 Cir. 1974). In light of this standard, which, as Judge Lasker has noted, "is not a high one," the defendants' assertion that the present complaint does not give rise to substantial constitutional questions is perceived by this Court as wholly spurious. Be that as it may, we briefly address such challenge.

As was noted above, plaintiffs seek a declaration that §§ 756, 757, 765, 767 and 769-75 of the New York Judiciary Law are unconstitutional in that they contravene the Fourteenth Amendment's guarantee of due process and equal protection of the laws. In support of their position, plaintiffs have advanced numerous challenges to the statutory scheme. In particular, they allege that the statutory scheme embraced in the challenged sections is unconstitutional because: (1) these statutes provide for notice which is insufficient to apprise debtors of the possible ramifications of their failure to appear at a show cause hearing; (2) due process requires that counsel be appointed for indigent debtors prior to their commitment for contempt; (3) due process requires that debtors be afforded notice and a hearing prior to the issuance of a warrant of commitment and that they be afforded a right to an allocution by the court prior to confinement; (4) due process bars the imposition of a fine for civil contempt which is neither coercive nor compensatory; and (5) the imprisonment of indigent debtors for failure to pay a civil contempt fine deprives such persons of equal protection of the laws.

While it is not the proper function of this Court to determine now which, if any, of these allegations might be possessed of merit in the ultimate, none of these claims can be viewed as insubstantial in a constitutional sense. This Court has found no case in the Supreme Court,³ or elsewhere, which either directly or by analogy unfavorably

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disposes of the contentions advanced by the plaintiffs. Indeed, cases relied upon by the Attorney General to support his position, *Fuentes v. Shevin*, 407 U.S. 67 (1972); *Sniadach v. Family Finance Corp.*, 395 U.S. 337 (1969); *Tate v. Short*, 401 U.S. 395 (1971); *Williams v. Illinois*, 399 U.S. 235 (1970); and *Desmond v. Hachey*, 315 F.Supp. 328 (D.Me. 1970), to the extent that they are relevant, can only be said to support the plaintiffs' claims. Rather than being "so attenuated and unsubstantial as to be devoid of merit," "no longer open to discussion," "wholly insubstantial," "obviously frivolous," "plainly unsubstantial," or foreclosed by earlier decisions, the issues raised by the instant case are perceived by this Court as giving rise to real, viable and substantial constitutional controversies, the resolution of which are far from settled and are clearly not free of doubt or rendered frivolous by the prior decisions of the Supreme Court. We are presented with issues which are wholly appropriate subjects for adjudication by a three-judge court.⁴

The substantiality of the issues raised herein is manifested by reference to numerous decisions of the Supreme Court,⁵ as well as to the several lower federal court and state court opinions which have addressed questions of like or analogous nature. See, e.g., *Non-Resident Taxpayers Association v. Murray*, 347 F.Supp. 399 (E.D.Pa. 1972) (three-judge court), *aff'd mem.*, 410 U.S. 919 (1973) challenge to Pennsylvania statute governing issuance of a writ of *capias ad respondendum*; *Desmond v. Hachey*, 315 F.Supp. 328 (D.Me. 1970) (declaring unconstitutional a Maine law which permitted the arrest and incarceration, without hearing, of a judgment debtor who had failed to obey a disclosure subpoena); *Otton v. Zaborac*, 525 P.2d 537 (Alaska Sup.Ct. 1974) (right of indigent faced with adjudication of civil contempt in non-support context to appointed counsel); *Sodones v. Sodones*, 314 N.E.2d 906 (Mass.Sup.Jud. Ct. 1974) (due process in civil contempt

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context); *Yoder v. County of Cumberland*, 278 A.2d 379 (Me.Sup.Ct. 1971) (summary incarceration of debtor without hearing held unconstitutional); *Perlmutter v. DeRowe*, 274 A.2d 283 (N.J.Sup.Ct. 1971) (New Jersey *ca. re.* practice read to require that debtor be brought before a judge immediately upon his arrest based upon an *ex parte* writ); *In re Harris*, 69 Cal.2d 486, 446 P.2d 148, 72 Cal. Rptr. 340 (1968) (California "mesne process of civil arrest without opportunity to be heard with the assistance of counsel is not due process." 446 P.2d at 152.); *but see, Carter v. Lynch*, 429 F.2d 154 (4 Cir. 1970) (a pre-*Fuentes* decision). See also, Alderman, *supra*, 24 Syracuse L. Rev. at 1239-1247; Countryman, *The Bill of Rights and the Bill Collector*, 15 Ariz. L. Rev. 521, 567-72 (1973); Comment, *Imprisonment for Debt and the Constitution*, 1970 L. & Soc. Order 659 (1970).

If any qualms concerning the substantiality of the constitutional issues presented in this litigation remain with the reader after careful consideration of the above noted authorities, surely the following passage from the Court's opinion in *Fuentes v. Shevin*, 407 U.S. 67, 81 (1972) (whatever its vitality in light of *Mitchell v. W. T. Grant*, 416 U.S. 600 (1974)) places them at rest.

The requirement of notice and an opportunity to be heard raises no impenetrable barrier to the taking of a person's possessions. But the fair process of decision-making that it guarantees works, by itself, to protect against arbitrary deprivation of property. For when a person has an opportunity to speak up in his own defense, and when the state must listen to what he has to say, substantively unfair and simply mistaken deprivations of property interests can be prevented. It has long been recognized that "fairness can rarely be obtained by secret, one-sided determination of facts decisive of rights. . . . [And n]o

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better instrument has been devised for arriving at truth than to give a person in jeopardy of serious loss of notice of the case against him and opportunity to meet it." (Citation omitted).

If such procedural rights must be accorded to one who is subject to a deprivation of property rights, then, clearly, substantial constitutional issues are presented with regard to one who is subject to incarceration as a result of the statutory scheme embraced in Article 19 of the New York Judiciary Law. *See also, Desmond v. Hachey, supra*, 315 F.Supp. at 333.

Having thus concluded that plaintiffs have raised substantial constitutional questions and have otherwise met the prerequisites of the three-judge court statute, 28 U.S.C. §§ 2281, 2284, only one further point raised by the Attorney General detains us from notifying Chief Judge Kaufman of the pendency of this cause, and then, only briefly. In his Brief (at 6-7) the Attorney General states: "Assuming *arguendo*, that the state court proceedings are 'criminal' and plaintiffs are entitled to the asserted rights, there are pending state court proceedings (supplementary to judgment) which, if plaintiffs only would appear—even once—their rights, whatever they may be, could be vindicated. In the meanwhile, principles of equity, comity and federalism should prevail. *Younger v. Harris*, 401 U.S. 37 (1971); *Samuels v. Mackell*, 401 U.S. 66 (1971); as the civil matters, *Gibson v. Berryhill*, 411 U.S. 564 (1973)." However, the sections and procedures subject to attack in this lawsuit, are not "criminal" in nature, but rather, are "civil" and result in the imposition of civil contempt sanctions and this has been long recognized by the courts of the State of New York. *See, e.g., King v. Barnes*, 113 N.Y. 476 (1889); *Feinberg v. Kutcosky*, 147 App. Div. 393, 132 N.Y.S. 9 (3rd Dept. 1911) ("Failure to originally appear for examination in pursuance of an order in sup-

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plementary proceedings, or upon an adjourned day is a civil contempt, and not a criminal one . . ." 132 N.Y.S. at 10); *Samuels v. Ganz*, 174 Misc. 399, 21 N.Y.S.2d 268 (Sup. Ct. 1940). (Indeed § 753 is entitled "Power of courts to punish for civil contempts.") As Judge Smith has recently noted, the strict rule of *Younger* and its progeny has no place in these circumstances.

It must be remembered, however, that the Supreme Court has thus far refused to extend *Younger* to cases involving state civil proceedings. *See, Gibson v. Berryhill*, 411 U.S. 564, 573-576, 93 S.Ct. 1689, 36 L. Ed. 2d 488 (1973); *California v. LaRue*, 409 U.S. 109, 124 n.2, 93 S.Ct. 390, 34 L. Ed. 2d 342 (1972) (Marshall, J., dissenting); *Mitchum v. Foster*, 407 U.S. 225, 244, 92 S.Ct. 2151, 32 L. Ed. 2d 705 (1972) (Burger, C.J., concurring); *Younger v. Harris*, 401 U.S. 37, 55, 91 S.Ct. 746, 27 L. Ed. 2d 669 (1971) (Stewart, J., concurring).

We are, therefore, unwilling to endorse the district court's view . . . that a support action is so "quasi-criminal" as to bring it within the strict ambit of *Younger*.⁵ . . . [W]e do believe that the particularly stringent formulation of . . . *Younger* should be limited, at least until the Court instructs otherwise, to cases involving traditionally criminal proceedings.

Blouin v. Dembitz, 489 F.2d 488, 490-91 (2 Cir. 1973). *See also, Polk v. State Bar of Texas*, 480 F.2d 998, 1002 (5 Cir. 1973), quoting from, *Palaio v. McAuliffe*, 466 F.2d 1230 (5 Cir. 1972) ("the principles of *Younger* bar federal

⁵ As the district court noted, the state's characterization of the proceedings will at least partially determine *Younger's* applicability. (Citations omitted). Here it is clear that contemporary New York law views the support proceedings at issue as "civil." (Citations omitted).

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intervention in a state civil proceeding that is an integral part of state's enforcement of its criminal laws."). Cf., *Allee v. Medrano*, 416 U.S. 802 (1974); *Steffel v. Thompson*, 415 U.S. 452 (1974).

This Court is of the view that while plaintiffs seek to imbue civil contempt proceedings involving judgment debtors with certain of the elements usually associated with the criminal law, such proceedings as are now ongoing in the state courts do not, for that reason, become "criminal" in nature and, as such, an assumption *arguendo* to the contrary and dismissal under the doctrine of *Younger* and its progeny is not warranted.⁴

For all of the reasons aforestated, plaintiffs' motion to convene a three-judge court pursuant to 28 U.S.C. §§ 2281 and 2284 is hereby granted and this Court will so advise Chief Judge Kaufman. The defendants' motion to dismiss is hereby denied.

It is So ORDERED.

JOHN M. CANNELLA
United States District Judge

Dated: New York, N. Y., January 13, 1975.

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FOOTNOTES

¹ See, in addition to the Judiciary Law sections here in suit, NYCPLR 5223 and 5251; 6 J. Weinstein, H. Korn and A. Miller, *New York Civil Practice* ¶ 5251.01 *et seq.* (1973); 10 Carmody Wait 2d § 64:376 (1966) and 22 Carmody Wait 2d § 140:38 *et seq.* (particularly §§ 140:133-140:137).

^{1A} Even more recently, the Supreme Court has restated "the several conditions precedent to convening a three-judge court under 28 U.S.C. §§ 2281 and 2284" as being:

the constitutional question raised [is] substantial; the action [seeks] to enjoin a state official from executing statutes of statewide application; and the complaint at least formally allege[s] a basis for equitable relief.

Gonzalez v. Automatic Employees Credit Union, — U.S. —, 43 U.S.L.W. 4025, 4026 (Dec. 10, 1974).

² It is plain from reading the complaint, as well as from what is said above, that a basis for equitable relief has been formally alleged by plaintiffs and that this action attacks a state statute's general application. Additionally, while defendant Quinlan, the Sheriff of Dutchess County and defendants Juicide and Aldrich, Judges of the Dutchess County Court, are "local officers" under the provisions of § 2 of the New York Public Officers Law, it has long been recognized that they are "state officers" for purposes of the instant standard. *Spielman Motor Co. v. Dodge*, 295 U.S. 89, 92-95 (1935). See also, *Board of Regents v. New Left Education Project*, 404 U.S. 541, 544 n. 2 (1972).

³ Cf., *Endicott Johnson Corp. v. Encyclopedia Press, Inc.*, 266 U.S. 285 (1924). In *Endicott Johnson*, at 288-90, it was held that the opportunity of a defendant to appear and to contest the entry of a judgment which adjudicated his civil obligation to pay money was sufficient to render unnecessary further notice or hearing before the judgment creditor might resort to a form of execution by which property of the debtor would be summarily applied in satisfaction of the judgment. While the continued vitality of *Endicott Johnson* is doubtful, see *Hanner v. DeMarcus*, 390 U.S. 736 (1968) (Douglas, J. dissenting from dismissal of writ of certiorari as improvidently granted), its holding is plainly distinguishable from the matter at bar. This is because the civil contempt provisions here at issue concern themselves with proceedings supplementary to the entry of judgment and involve a new and separate adjudication arising not from the debt but rather, from a failure to obey the disclosure subpoena. Here, the determination goes to an individual's liberty, not merely his property, and,

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for that reason alone, *Endicott Johnson* can not control. See, *Desmond v. Hachey*, 315 F.Supp. at 332; *Yoder v. County of Cumberland*, 278 A.2d 379, 387 and n. 5 (Me.Sup.Ct. 1971).

⁴ This is not to say that the three-judge panel might not ultimately decide to invoke one of the abstention doctrines in the present case. However, such decision is for the panel, and not for this Court, as a single judge, to make. See, discussion at n. 6 *infra*.

⁵ While the citation of Supreme Court decisions which might arguably support the claims raised in this suit (in addition to those already cited) would expand over several pages, the following representative cases may assist the reader in focusing upon the issues presented. See, e.g., *Wolff v. McDonnell*, — U.S. —, 42 U.S.L.W. 5190 (June 26, 1974); *Gagnon v. Scarpelli*, 411 U.S. 778 (1973); *Morrissey v. Brewer*, 408 U.S. 471 (1972); *Argersinger v. Hamlin*, 407 U.S. 25 (1972); *Groppi v. Leslie*, 404 U.S. 496 (1972); *Goldberg v. Kelley*, 397 U.S. 254 (1970); *In re Gault*, 387 U.S. 1 (1967); *Shillitani v. United States*, 384 U.S. 364 (1966); *In re Oliver*, 333 U.S. 257 (1949).

⁶ This is not to suggest that the principles enunciated in *Younger* and its progeny, together with other abstention doctrines, may not be invoked by the panel in the exercise of its discretion. Rather, we conclude only that the doctrine of absolute bar to federal court adjudication in instances where state criminal proceedings are presently pending (absent exceptional circumstances) contained in *Younger* and the subsequent decisions does not foreclose our consideration of the instant case. As the Supreme Court recently stated:

A three-judge court . . . is normally required even if the decision is to dismiss under *Younger-Samuels* principles, since an exercise of discretion will usually be necessary, see *Jones v. Wade*, 479 F.2d 1176, 1180 (CA 5 1973); *Abele v. Markle*, 452 F.2d 1121, 1125 (CA 2 1971); see generally Note, The Three-Judge District Court: Scope and Procedure under Section 2281, 77 Harv. L. Rev. 299, 309 (1963).

Steffel v. Thompson, 415 U.S. at 457 n. 7. This statement of the Court is in full accord with the earlier decisions in this Circuit and District. *New York State Waterways Assn., Inc. v. Diamond*, 469 F.2d 419, 423 (2 Cir. 1972) ("The decision to abstain is for the three-judge court, not for the single judge."); *Abele v. Markle*, 452 F.2d 1121, 1125 (2 Cir. 1971); *Snead v. Dept. of Social Services*, 351 F.Supp. 1360, 1366 (S.D.N.Y. 1972); *Johnson v. Rockefeller*, 58 F.R.D. at 48. To the extent that

*Opinion and Order Convening Three-Judge Court,
387 F.Supp. 630.*

Judge Newman's recent decision in *Cooper v. Measkill*, 376 F.Supp. 731 (D.Conn. 1974) is to the contrary, we decline to follow it as we find that it does not give proper recognition to the views expressed by the Court in *Steffel*, *supra*. As the Fifth Circuit well stated in *Jones v. Wade*, 479 F.2d 1176, 1180 (5 Cir. 1973):

In a case otherwise within the jurisdiction of a three-judge court, the question whether the *Younger* doctrine requires abstention is generally a matter for the exercise of equitable discretion, and thus ordinarily a determination to be made by a three-judge court rather than by a single judge. (Citations omitted). A single district judge may dismiss only where it is plain that *Younger* leaves no room for a three-judge court to exercise equitable discretion.

Notice of Motion to Amend Affidavits.

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

To the above-named defendants:

PLEASE TAKE NOTICE that the plaintiffs will bring on for hearing in Room 1001 of the United States Courthouse, Foley Square, New York, New York, on the 24th day of February, 1975, at 9:30 o'clock, or as soon thereafter as counsel can be heard, the attached motion seeking to permit Leslie Nameth and McKinley Humes to file amended affidavits in support of the motion to intervene and for injunctive relief.

Please take further notice that opposing affidavits and answering memorandum must be served upon counsel for plaintiffs at least three (3) days before the return date of this motion.

JANE E. BLOOM

MID-HUDSON VALLEY LEGAL SERVICES PROJECT
(Monroe County Legal Assistance Corp.)
Attorneys for Plaintiffs
50 Market Street
Poughkeepsie, New York 12601
Jane E. Bloom, of Counsel

Notice to Amend Affidavits.

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

Plaintiffs LESLIE NAMETH and MCKINLEY HUMES move this court:

(1) Pursuant to Rules 6 (b), 7, 8, 15, 23 and 24 of the Federal Rules of Civil Procedure for an order permitting Leslie Nameth and McKinley Humes to file amended affidavits in support of motion to intervene and for injunctive relief.

The ground for the motion is that it is appropriate for Leslie Nameth and McKinley Humes, members of the alleged class of plaintiffs in the main action, to file amended affidavits in support of the motion to intervene and for injunctive relief because relevant events have occurred since their original affidavits were filed.

JANE E. BLOOM

MID-HUDSON VALLEY LEGAL SERVICES PROJECT
(Monroe County Legal Assistance Corp.)
Attorneys for Plaintiffs
50 Market Street
Poughkeepsie, New York 12601
Jane E. Bloom, of Counsel

Amended Affidavit of McKinley Humes (Annexed).

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

HARRY VAIL, JR., PATRICK WARD, RICHARD MCNAIR, JAMES HURRY, LESLIE NAMETH, MCKINLEY HUMES, JOSEPH RABASCO and JOANNE HARVARD, on behalf of themselves and all other persons similarly situated,

Plaintiffs,

against

LAWRENCE M. QUINLAN, individually and in his capacity as Sheriff of Dutchess County, JOSEPH JUIDICE, individually and in his capacity as a Judge of the Dutchess County Court, RAYMOND E. ALDRICH, JR., individually and in his capacity as Judge of the Dutchess County Court, and PUBLIC LOAN COMPANY, INC., ARNOLD GORAN, M.D., P.C., and GEORGE MONTGOMERY, JR., M.D., HERBERT H. REDL, d/b/a H.H. REDL's AUTO BODY WORKS, and W. VINCENT GRADY, in his capacity as Justice of the Supreme Court of the State of New York, and GLADYS RABASCO, and DOMESTIC FINANCE,

Defendants.

MCKINLEY HUMES, being duly sworn, deposes and says as follows:

1. I restate and reallege that allegations contained in paragraphs 1 to 19 of "AFFIDAVIT OF MCKINLEY HUMES IN SUPPORT OF MOTION TO INTERVENE AND FOR INJUNCTIVE RELIEF" sworn to on January 8, 1975.

2. Upon information and belief, on January 8, 1975, District Court Judge Thomas P. Griesa signed an Order

Amended Affidavit of McKinley Humes (Annexed).

to Show Cause for Preliminary Injunction; Temporary Restraining Order and Intervention Pursuant to this Order, Judge Griesa ordered:

IT IS HEREBY ORDERED, that it appearing to the Court that the defendant HERBERT H. REDL, d/b/a H.H. REDL's AUTO BODY WORKS, will cause irreparable injury, damage and loss to LESLIE NAMETH and defendant MONTGOMERY will cause irreparable injury, damage and loss to MCKINLEY HUMES, and defendant DOMESTIC FINANCE will cause irreparable injury, damage and loss to JOANNE HARVARD, unless they are restrained from imprisoning LESLIE NAMETH, MCKINLEY HUMES, and JOANNE HARVARD, pursuant to Article 19 of the New York Judiciary Law, before adverse parties and their attorneys can be heard in opposition, defendants, HERBERT H. REDL, d/b/a H.H. REDL's AUTO BODY WORKS, and DOMESTIC FINANCE, their subordinates, agents and attorneys, be and they are hereby RESTRAINED from imprisoning LESLIE NAMETH and MCKINLEY HUMES pursuant to Article 19, Sections 756, etc., of the New York Judiciary Law, pending a final hearing and determination of their motion for a preliminary injunction by a three-judge court or otherwise, as determined (see the Temporary Restraining Order of November 8, 1974).

3. Upon information and belief, my attorney served a copy of the Order to Show Cause of January 8, 1975, on attorneys for Lawrence Quinlan, Joseph Juidice, Raymond Aldrich, Public Loan Company, Inc., Arnold Goran, M.D., P.C., George Montgomery, Jr., M.D., Herbert H. Redl, d/b/a H.H. Redl's Auto Body Works, W. Vincent Grady, Gladys Rabasco, and Domestic Finance.

4. On February 10, 1975, at about 10:30 A.M. deputies of defendant Quinlan came to my home and stated they

Amended Affidavit of McKinley Humes (Annexed).

had a warrant for my arrest. They stated that unless I paid a contempt fine of \$254.18, they would commit me to jail until I paid the fine.

5. I told the deputies of defendant Quinlan that I had been to Legal Services and that a Judge had signed an order stating that I was not to be arrested.

6. Deputies of defendant Quinlan informed me that they had instructions to collect the fine of \$254.18 or arrest my body.

7. On February 10, 1975, deputies of defendant Quinlan arrested me and committed me to the Dutchess County Jail.

8. When I arrived at the Dutchess County Jail on February 10, 1975, I informed the Head Jailer that I should not be committed to jail because a Judge had signed an order stating that I was not to be arrested.

9. The Head Jailer informed me that he had instructions to commit or hold me in Dutchess County Jail until I paid the fine of \$254.18.

10. At about 11:00 A.M. I was placed in a cell in Dutchess County Jail with Leslie Nameth.

11. At about 1:30 P.M. I was handcuffed and taken to the Dutchess County Courthouse and appeared before Judge Juidice. At that time a member of the County Attorney's office appeared and told Judge Juidice that I had been arrested and committed to the Dutchess County Jail by mistake.

12. Judge Juidice asked me how long I had been a resident of Poughkeepsie. He asked me if I planned to

Amended Affidavit of McKinley Humes (Annexed).

leave the City. He then stated I was released from jail until I received any further notice.

13. At the time of my arrest I had no money to pay the fine. I am unable to find work and have been denied Unemployment Insurance Benefits. I am subsisting with loans from friends.

14. I pray that this Court:

(1) Enter judgment on behalf of Plaintiff Humes in the amount of \$100,000 against defendant Quinlan.

(2) Enter judgment on behalf of Plaintiff Humes in the amount of \$100,000 against defendant Montgomery.

15. No prior applications for similar relief have been made.

s/ MCKINLEY HUMES

(Jurat)

Amended Affidavit of Leslie Nameth (Annexed).

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

LESLIE NAMETH, being duly sworn, deposes and says as follows:

1. I restate and reallege that allegations contained in paragraphs 1 and 19 of "Affidavit of Leslie Nameth in Support of Motion to Intervene and for Injunctive Relief" sworn to on January 8, 1975.

2. On January 8, 1975, upon information and belief, District Court Judge Thomas P. Griesa signed an Order to Show Cause for Preliminary Injunction; Temporary Restraining Order and Intervention. Pursuant to this Order, Judge Griesa ordered

IT IS HEREBY ORDERED, that it appearing to the Court that the defendant Herbert H. Redl, d/b/a H.H. Redl's Auto Body Works, will cause irreparable injury, damage and loss to Leslie Nameth and defendant Montgomery will cause irreparable injury, damage and loss to Mc Kinley Humes, and defendant Domestic Finance will cause irreparable injury, damage and loss to Joanne Harvard, unless they are restrained from imprisoning Leslie Nameth, McKinley Humes, and Joanne Harvard, pursuant to Article 19 of the New York Judiciary Law, before adverse parties and their attorneys can be heard in opposition, defendants, Herbert H. Redl, d/b/a H.H. Redl's Auto Body Works, and Domestic Finance, their subordinates, agents and attorneys, be and they are hereby RESTRAINED from

Amended Affidavit of Leslie Nameth (Annexed).

imprisoning Leslie Nameth and Mc Kinley Humes pursuant to Article 19, Sections 756, etc., of the New York Judiciary Law, pending a final hearing and determination of their motion for a preliminary injunction by a three-judge court or otherwise, as determined (see the Temporary Restraining Order of November 8, 1974.)

3. Upon information and belief my attorney served a copy of the Order to Show Cause of January 8, 1975, on attorneys for Lawrence Quinlan, Joseph Juidice, Raymond Aldrich, Public Loan Company, Inc., Arnold Goran, M.D., P.C., George Montgomery, Jr., M.D., Herbert H. Redl, d/b/a H.H. Redl's Auto Body Works, W. Vincent Grady, Gladys Rabasco, and Domestic Finance.

4. On February 10, 1975, at about 10:30 A.M. deputies of defendant Quinlan came to my home and stated they had a warrant for my arrest. They stated that unless I paid a contempt fine of \$94.56, they would commit me to jail until I paid the fine.

5. I told the deputies of defendant Quinlan that they must have made a mistake.

6. Deputies of defendant Quinlan informed me that they had instructions to collect the fine of \$94.56 or arrest my body.

7. On February 10, 1975, deputies of defendant Quinlan arrested me and committed me to the Dutchess County Jail.

8. At about 11:00 A.M. I was placed in a cell in the Dutchess County Jail with Mc Kinley Humes.

9. At about 1:30 P.M. I was handcuffed and taken to the Dutchess County Courthouse and appeared before Judge

Amended Affidavit of Leslie Nameth (Annexed).

Juidice. At that time a member of the County Attorney's office appeared and told Judge Juidice that I had been arrested and committed to the Dutchess County Jail by mistake.

10. Judge Juidice asked me how long I had been a resident of Poughkeepsie. He told me not to leave the City. He said the Court would be in contact with me.

11. At the time of my arrest I had no money to pay the fine. My wife has applied for welfare. I have applied for Unemployment Insurance Benefits. I have savings consisting of \$80 which I am using to support my family.

12. I pray that this Court:

(1) Enter judgment on behalf of plaintiff Nameth in the amount of \$100,000 against defendant Quinlan for my unlawful imprisonment.

(2) Enter judgment on behalf of plaintiff Nameth in the amount of \$100,000 against defendant Redl.

13. No prior applications for similar relief have been made.

s/ LESLIE NAMETH

(Jurat)

Affidavit of Jane E. Bloom (Annexed).

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

[S A M E T I T L E]

JANE E. BLOOM being duly sworn deposes and says:

1. I am an attorney of record in this proceeding. I submit this affidavit in support of the motion to amend affidavits of LESLIE NAMETH and MCKINLEY HUMES.

2. Upon information and belief, on January 8, 1975, District Court Judge Thomas P. Griesa signed an Order to Show Cause for Preliminary Injunction; Temporary Restraining Order and Intervention Pursuant to this Order, Judge Griesa ordered:

IT IS HEREBY ORDERED, that it appearing to the Court that the defendant HERBERT H. REDL, d/b/a H.H. REDL's AUTO BODY WORKS, will cause irreparable injury, damage and loss to LESLIE NAMETH and defendant MONTGOMERY will cause irreparable injury, damage and loss to MCKINLEY HUMES, and defendant DOMESTIC FINANCE will cause irreparable injury, damage and loss to JOANNE HARVARD, unless they are restrained from imprisoning LESLIE NAMETH, MCKINLEY HUMES, and JOANNE HARVARD, pursuant to Article 19 of the New York Judiciary Law, before adverse parties and their attorneys can be heard in opposition, defendants, HERBERT H. REDL, d/b/a H.H. REDL's AUTO BODY WORKS, and DOMESTIC FINANCE, their subordinates, agents and attorneys, be and they are hereby RESTRAINED from imprisoning LESLIE NAMETH and MCKINLEY HUMES pursuant to Article 19, Sections 756,

Affidavit of Jane E. Bloom (Annexed).

etc., of the New York Judiciary Law, pending a final hearing and determination of their motion for a preliminary injunction by a three-judge court or otherwise, as determined (see the Temporary Restraining Order of November 8, 1974).

3. On January 8, 1975, upon information and belief, copies of the Order to Show Cause of January 8, 1975, were served on attorneys for Lawrence Quinlan, Joseph Juidice, Raymond Aldrich, Public Loan Company, Inc., Arnold Goran, M.D., P.C., George Montgomery, Jr., M.D., Herbert H. Redl, d/b/a H.H. Redl's Auto Body Works, W. Vincent Grady, Gladys Rabasco, and Domestic Finance.

4. On February 10, 1975, I was in Supreme Court in Dutchess County from 9:30 a.m. to 12:00 p.m. When I returned to my office at 12:00 p.m., my secretary indicated to me that Mrs. Nameth had called the office and stated that her husband was in jail and that Elizabeth Johnson had called the office and stated that McKinley Humes was in jail.

5. On February 10, 1975, at 12:05 p.m., I called the Dutchess County Jail and informed the Jailer that Leslie Nameth and McKinley Humes were committed to Dutchess County Jail contrary to the provisions of Judge Griesa's temporary restraining order of January 8, 1975. The Jailer informed me that he had instructions to arrest these individuals and that I should speak with the County Attorney.

6. On February 10, 1975, at 12:15 p.m., I called the County Attorney's office and informed Stephen Wing, an Assistant County Attorney, that Leslie Nameth and McKinley Humes had been arrested and committed to the Dutchess County Jail in violation of Judge Griesa's tem-

Affidavit of Jane E. Bloom (Annexed).

porary restraining order of January 8, 1975. Stephen Wing informed me that he would take care of the matter.

7. At 12:30 p.m., I phoned Stephen Wing and informed him that Leslie Nameth and McKinley Humes should be released immediately. Stephen Wing informed me that he had spoken with Judge Juidice. Judge Juidice informed him that Leslie Nameth and McKinley Humes could not be released until they appeared before him that afternoon.

8. Leslie Nameth and McKinley Humes were released in the afternoon of February 10, 1975.

9. Leslie Nameth and McKinley Humes were arrested and committed to the Dutchess County Jail in direct violation of Judge Griesa's temporary restraining order of January 8, 1975.

JANE E. BLOOM

Sworn to before me February 4, 1975
LEONA S. MALTZ

(Jurat)

Notice of Motion to Intervene.

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

To the above-named defendants:

PLEASE TAKE NOTICE that the plaintiff will bring on for hearing in Room 1001 of the United States Courthouse, Foley Square, New York, New York, on the 28th day of February, 1975, at 9:30 o'clock, or as soon thereafter as counsel can be heard, the attached motion to intervene Richard Russell, Jr., Helen Thorpe, and Robert Harrell in this action as named party plaintiffs, and to add as party defendants Alexander Paulsen and Douglas Paulsen, d/b/a Hudson View Park Co. and Dr. George T.C. Way, M.D., and Herbert H. Redl, d/b/a H.H. Redl's Auto Body Works. Please take notice that opposing affidavits and answering memorandum must be served upon counsel for plaintiff at least three days before the return date of this motion.

Dated: Poughkeepsie, New York
February 13, 1975

MID-HUDSON VALLEY LEGAL SERVICES PROJ.
(Monroe County Legal Assistance Corp.)
Attorneys for Plaintiffs
50 Market Street
Poughkeepsie, New York
Jane E. Bloom, of Counsel

Motion to Intervene.

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

Richard Russell, Jr., Helen Thorpe, and Robert Harrell move this court:

(a) Pursuant to Rules 23 and 24 (b) of the Federal Rules of Civil Procedure, to intervene in this action as named party plaintiffs,

(b) Pursuant to Rules 19a, 20a, and 21 to add as party defendants, Herbert H. Redl, d/b/a H. H. Redl's Auto Body Works; Alexander Paulsen and Douglas Paulsen, d/b/a Hudson View Park Co., and Dr. George T. C. Way, M.D.

(c) Pursuant to Rules 6 (b), 7, 8, 23 and 24 of the Federal Rules of Civil Procedure, for an order allowing a reasonable extension of time to file a proposed intervenor's complaint, and/or deeming the affidavits of Richard Russell, Jr., Helen Thorpe and Robert Harrell, to be a verified pleading determination of this motion.

The grounds for the motion are that it is appropriate for Richard Russell, Jr., Helen Thorpe, and Robert Harrell, members of the alleged class of plaintiffs in the main action, to intervene at this early stage of the proceedings, since the facts of their cases, the legal claims they make,

Affidavit of Richard Russell, Jr. (Annexed).

and their claims for relief are all substantially identical to those of the named plaintiffs.

s/ Jane E. Bloom
 JANE E. BLOOM
 MID-HUDSON VALLEY LEGAL SERVICES PROJ.
 (Monroe County Legal Assistance Corp.)
 Attorneys for Plaintiffs
 50 Market Street
 Poughkeepsie, New York 12601
 Jane E. Bloom, of Counsel

Affidavit of Richard Russell, Jr. (Annexed).

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

RICHARD RUSSELL, JR., being duly sworn, deposes and says as follows:

1. Plaintiff Russell is a citizen of the United States and the State of New York. He resides at 139 Rombout Avenue, Beacon, New York, with his wife and infant child.

2. Plaintiff Russell is 24 years of age.

3. In 1973, plaintiff Russell leased an apartment at Hudson View Park for one year. After about (6) six months plaintiff Russell and his family moved out of their apartment because they could not afford to continue paying rent.

Affidavit of Richard Russell, Jr. (Annexed).

4. On August 1, 1973, a judgment was entered in the Justice Court of the Town of Fishkill, New York, in the case *Alexander Paulsen and Douglas Paulsen, d/b/a Hudson View Park Co. v. Richard Russell, Jr., and Diane Russell*, in favor of Hudson View Park and against plaintiff Russell and Diane Russell for \$932.11.

5. On August 8, 1973, Thomas A. Reed, Attorney for defendant Hudson View Park, served a subpena duces tecum, requiring plaintiff Russell to appear on August 28, 1973, before a notary public at 75 Market Street, Poughkeepsie, New York, for examination concerning his property.

6. On September 28, 1973, Thomas A. Reed caused to be served a motion for instalment payments on plaintiff Russell.

7. On October 16, 1973, defendant Aldrich granted the motion for installment payments and on October 23, 1973, defendant Aldrich signed the installment payment order stating:

ORDERED, that RICHARD RUSSELL, JR., the judgment debtor herein, be and he is directed to apply out of all monies received or to be received by him, from any source, in each and every month, on the first day thereof, commencing on the first day of November, 1973, the sum of \$50.00 on account of the said judgment herein, augmented by interest accrued thereon, until such time as the balance outstanding on said judgment and interest shall have been paid in full, and it is further,

ORDERED, that said monthly installments of \$50.00 shall be delivered and paid over by the judgment debtor by

Affidavit of Richard Russell, Jr. (Annexed).

mailing the same to Reed & Reed, attorneys for the judgment creditor herein, at No. 75 Market Street, Poughkeepsie, New York.

8. Defendant Aldrich signed this order based upon the following facts:

Now, upon reading and filing the notice of motion herein, and the affidavit of Thomas A. Reed, sworn to the 24th day of September, 1973, in support of said motion, and after hearing Reed & Reed, Esqs., for the judgment creditors in favor of said motion, and there being no opposition thereto and due deliberation having been had, it is motion of Reed & Reed, attorneys for the judgment creditors herein.

9. When plaintiff Russell failed to make payments in accordance with the October 23, 1973, installment payment order, defendant Juidice issued an Order to Show Cause pursuant to Judiciary Law Article 19, Section 757(1) ordering plaintiff Russell to appear at the Dutchess County Court on November 20, 1973, at 10:00 a.m. to show cause why he should not be punished as and for a contempt of the said Court and fining him for such contempt the amount of \$250.00, a portion of the judgment herein, plus \$10.00 costs and expenses, on the ground that the judgment debtor has in all respects refused and willfully neglected to obey the provisions of the installment payment order.

10. When plaintiff Russell failed to appear in County Court on November 20, 1973, defendant Juidice granted the motion of Thomas A. Reed, to find plaintiff Russell in contempt of court on November 21, 1973.

11. On January 21, 1974, defendant Aldrich issued the Order of Contempt pursuant to Section 770 of Article 19.

Affidavit of Richard Russell, Jr. (Annexed).

The Order of Contempt issued by defendant Aldrich stated:

ORDERED that the defendant Richard Russell, Jr., is adjudged of a contempt of this court, which contempt defeated and impaired the rights and remedies of the plaintiffs, and it is further

ORDERED that the said defendant Richard Russell, Jr., for his misconduct and willful contempt be and he is hereby fined the sum of \$250.00 to be paid to the plaintiff, besides the sum of \$10.00 costs of this proceeding by paying said amount to Reed & Reed, Esqs., attorneys for the plaintiffs by making installment payments in the amount of Twenty (\$20.00) Dollars per week, commencing one week after service of a certified copy of this order. Upon payment as aforesaid, the said defendant shall be deemed purged of his contempt, but in the event of his failure to pay as directed, said defendant be committed by the Sheriff of the County wherein he may be found in the County Jail of such County to remain retained there until he has paid the fine imposed as aforesaid, together with the costs and the sheriff's legal fees in connection therewith and that a warrant of commitment be issued accordingly without further notice.

12. When plaintiff Russell failed to comply with the Order of Contempt, defendant Aldrich issued an *ex parte* Commitment Order pursuant to Judiciary Law Article 19, Section 756 on March 8, 1974. The Commitment stated:

NOW THEREFORE, you are hereby commanded that you take the body of Richard Russell, Jr., and him closely and safely keep in your custody in the common jail of your county until he shall have paid the sum of \$250.00, the fine imposed as aforesaid, also the costs and ex-

Affidavit of Richard Russell, Jr. (Annexed).

penses amounting to \$10.00, and your fees hereon, or until the said Richard Russell, Jr., shall be sooner discharged by an order of the court.

13. On January 30, 1975, deputies of defendant Quinlan went to plaintiff Russell's home and arrested him pursuant to the commitment order of March 8, 1974, and committed him to the Dutchess County Jail. On January 30, 1975, deputies of defendant Quinlan arrested and held plaintiff Russell in the Dutchess County Jail pursuant to Judiciary Law Sections 756 and 774.

14. At the time of his arrest plaintiff Russell had assets consisting of \$40.00 in a savings account. At the time of his arrest, plaintiff Russell was and is unemployed. He expected to begin receiving public assistance from the Dutchess County Department of Social Services in February, 1975. He and his family own no property of value other than furniture and clothing.

15. On January 30, 1975, plaintiff Russell was released from Dutchess County Jail pursuant to Judiciary Law Section 774 after his father lent him funds to pay the fine totalling \$. This debt has remained unpaid due to his indigency.

16. The sum of \$289.95 was delivered to a deputy of defendant Quinlan, who, upon information and belief, delivered the money to defendant Hudson View Park Co., pursuant to Section 773 of the Judiciary Law.

17. By virtue of the foregoing, plaintiff Russell was wrongfully imprisoned for approximately 3 hours, suffered mental anguish, shame and humiliation, damage to his character and reputation, damage to his credit standing,

Affidavit in Opposition of Thomas A. Reed.

and was wrongfully deprived of \$289.95 in violation of his Fifth, Eighth, and Fourteenth Amendment rights to the United States Constitution.

18. Plaintiff Russell was deprived of his liberty and his property in the amount of the \$289.95 fine without being brought before the Court prior to incarceration to answer to defendant Hudson View Park's charges or to plead his indigency in violation of his due process rights under the Fifth, and Fourteenth Amendments to the United States Constitution.

19. At no time during the course of the civil contempt proceedings was the plaintiff Russell apprised of his right to counsel in these proceedings nor is there any provision pursuant to Article 19 of the Judiciary Law for the appointment of counsel in these proceedings nor is there any provision pursuant to Article 19 of the Judiciary Law for the appointment of counsel for indigent persons faced with the imminent danger of imprisonment in violation of the Fifth and Fourteenth Amendments to the United States Constitution.

20. Pursuant to the commitment order, plaintiff Russell was deprived of liberty because of his indigency. This deprivation of liberty constitutes a violation of his rights under the Equal Protection clause of the Fourteenth Amendment to the United States Constitution by subjecting plaintiff Russell to arrest and imprisonment because of his inability to pay the fine while a person with the ability to pay the fine would not be subject to arrest or imprisonment.

21. Pursuant to the commitment order, plaintiff Russell was subjected to an indefinite term of imprisonment for the non-payment of a fine that he was financially unable to pay.

Affidavit of Richard Russell, Jr. (Annexed).

Because the indefinite term of imprisonment is disproportionate to the alleged offense, it is in violation of the ban of the Eighth Amendment to the United States Constitution on the imposition of cruel and unusual punishments.

22. Plaintiff Russell prays that this Court:

(1) Enter judgment on behalf of plaintiff Russell in the amount of \$100,000 for his unlawful imprisonment.

(2) Enter judgment on behalf of plaintiff Russell in the amount of \$289.95 against defendant Hudson View Park Co., the recipient of the fine unlawfully imposed in violation of the Fifth, Eighth and Fourteenth Amendments.

23. No prior applications for similar relief have been made.

s/RICHARD RUSSELL

(Jurat)

Affidavit of Helen Thorpe (Annexed).

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

HELEN THORPE, being duly sworn, deposes and says as follows:

1. Plaintiff Thorpe is a citizen of the United States and the State of New York. She resides at 11-C Charles Street Court, Poughkeepsie, New York, with her five children.

2. Plaintiff Thorpe is 39 years of age.

3. On or about March, 1973, Plaintiff Thorpe's car was damaged by another car. Plaintiff Thorpe hired defendant H.H. Redl's Auto Body Works to tow her car at a fee of \$15. In May, 1973, defendant Redl's Agency sent Plaintiff Thorpe a bill for \$78 for storage and towing. At advice of her insurance company, Plaintiff Thorpe paid defendant Redl's Agency \$35, the value of the services.

4. On June 28, 1974, a default judgment was entered in the City Court of the City of Poughkeepsie, New York, in the case *Herbert H. Redl, d/b/a H.H. Redl's Auto Body Works v. Helen Thorpe* in favor of Herbert H. Redl and against Plaintiff Thorpe for \$112.75.

5. On August 3, 1974, Thomas A. Reed, Attorney for defendant Redl served a subpoena duces tecum, requiring Plaintiff Thorpe to appear on August 15, 1974, before a notary public at 75 Market Street, Poughkeepsie, New York, for the taking of a deposition regarding all matters

Affidavit of Helen Thorpe (Annexed).

relevant to the satisfaction of the judgment of June 28, 1974, and to produce certain records.

6. When Plaintiff Thorpe failed to appear on August 15, 1974, Defendant Juidice issued an Order to Show Cause pursuant to Judiciary Law Article 19, Section 757 (1) ordering Plaintiff Thorpe to appear at the Dutchess County Court on September 10, 1974, at 10:00 a.m. to "show cause why she should not be punished as for contempt for violation of and non-compliance with the said subpoena in that she failed to appear or respond pursuant thereto . . ."

7. When Plaintiff Thorpe failed to appear on September 10, 1974, the hearing on the Order to Show Cause was adjourned to September 24, 1974, at 10:00 a.m.

8. When Plaintiff Thorpe failed to appear in County Court on September 24, 1974, Defendant Juidice issued an Order of Contempt, pursuant to Judiciary Law Article 19, Section 770 holding Plaintiff Thorpe in contempt.

9. When Plaintiff Thorpe failed to comply with the Order of Contempt, Defendant Juidice issued an *ex parte* Commitment Order pursuant to Judiciary Law Article 19, Section 756.

10. On February 4, 1975, Plaintiff Thorpe was arrested by deputies of defendant Quinlan at her job at Ward 18, Main Building, Hudson River State Hospital, pursuant to the Order of Commitment and committed her to the Dutchess County Jail.

11. The deputies of defendant Quinlan arrested and held Plaintiff Thorpe in the Dutchess County Jail pursuant to Judiciary Law Sections 756 and 774.

Affidavit of Helen Thorpe (Annexed).

12. The Plaintiff was released from Dutchess County Jail pursuant to Judiciary Law Section 774, after her nephew lent her funds to pay the fine totalling \$139.63.

13. The sum of \$139.63 was delivered to a deputy of defendant Quinlan who, upon information and belief, delivered the money to defendant Redl's Agency pursuant to Section 773 of the Judiciary Law.

14. By virtue of the foregoing, plaintiff Thorpe was wrongfully imprisoned for approximately three hours, suffered mental anguish, shame and humiliation, damage to her character and reputation, damage to her credit standing, and was wrongfully deprived of \$139.63 in violation of her Fifth, Eighth, and Fourteenth Amendment rights to the United States Constitution.

15. Plaintiff Thorpe contends that the imposition of the fine and the punishment of imprisonment is violative of her rights secured by the Fifth, Eighth and Fourteenth Amendments to the United States Constitution.

16. With respect to the fine of \$139.63, Plaintiff Thorpe contends that Defendant Juidice wrongfully impose the fine without affording her the procedural right to answer Defendant Redl's charge of contempt or to challenge the amount of the fine imposed in violation of her right to due process secured by the Fifth and Fourteenth Amendments.

17. Plaintiff Thorpe has not been apprised of her right to counsel in this proceeding nor is there any provision pursuant to Article 19 of the Judiciary Law for the appointment of counsel for persons in violation of the right to counsel secured by the Fifth and Fourteenth Amendments.

Affidavit of Helen Thorpe (Annexed).

18. Plaintiff Thorpe contends that the imprisonment that occurred due to non-payment of the fine is in violation of the Eighth Amendment's ban upon cruel and unusual punishment in that the term of imprisonment is indefinite and disproportionate to the offense alleged.

19. Plaintiff Thorpe currently supports herself and five children on \$87 she earns every week from her employment at Hudson River State Hospital and partial assistance she receives from Dutchess County Department of Social Services. She had no assets or funds available to pay the fine besides money she had set aside to pay her rent.

20. Plaintiff Thorpe prays that this Court:

(1) Enter judgment on behalf of Plaintiff Thorpe in the amount of \$100,000.00 for her unlawful imprisonment.

(2) Enter judgment on behalf of Plaintiff Thorpe in the amount of \$139.63 against defendant Redl's Agency, the recipient of the fine unlawfully imposed in violation of the Fifth, Eighth, and Fourteenth Amendments.

21. No prior application for similar relief has been made.

s/ HELEN THORPE

(Jurat)

Affidavit of Evella Harrell (Annexed).

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

[S A M E T I T L E]

EVELLA HARRELL, being duly sworn, deposes and says as follows:

1. Plaintiff Harrell is a citizen of the United States and the State of New York. Until February 13, 1975, he resided at 201 Winnikee Street, Poughkeepsie, New York, with me, his wife, and his six children. On February 13, 1975, he left home having become depressed by his inability to find work and support his family.

2. Plaintiff Harrell is 42 years of age.

3. On or about 1972, I received medical services from Defendant Way.

4. On May 8, 1974, a default judgment was entered in the City Court of the City of Poughkeepsie, New York, in the case *George T.C. Way v. Robert H. Harrell and Evella Harrell*, in favor of George T.C. Way, M.D. and against Plaintiff Harrell and Evella Harrell for \$345.98.

5. Upon information and belief, on May 17, 1974, Thomas A. Reed, Attorney for Defendant Way served by mail a subpoena duces tecum, requiring Plaintiff Harrell to appear on June 5, 1974, before a notary public at 75 Market Street, Poughkeepsie, New York, for the taking of a deposition regarding all matters relevant to the satisfaction of the judgment of May 8, 1974, and to produce certain records.

Affidavit of Evella Harrell (Annexed).

6. Upon information and belief, when Plaintiff Harrell failed to appear on June 5, 1974, Defendant Juidice issued an Order to Show Cause pursuant to Judiciary Law Article 19, Section 757 (1) ordering Plaintiff Harrell to appear at the Dutchess County Court on July 2, 1974, at 10:00 a.m. to "show cause why he should not be punished as for contempt for violation of and non-compliance with the said subpoena in that he failed to appear or respond pursuant thereto . . ."

7. Upon information and belief, when Plaintiff Harrell failed to appear on July 2, 1974, the hearing on the Order to Show Cause was adjourned to July 9, 1974, at 10:00 a.m.

8. Upon informtion and belief, when Plaintiff Harrell failed to appear in County Court on July 9, 1974, Defendant Juidice issued an Order of Contempt July 9, 1974, pursuant to Judiciary Law Article 19, Section 770 holding Plaintiff Harrell in contempt and ordering:

ORDERED that the said defendant Robert Harrell for his misconduct and willful contempt be and he is hereby fined the sum of \$250.00 to be paid to the plaintiff, besides the sum of \$10.00 costs of this proceeding by paying said amount to Reed & Reed, Esqs., attorneys for the plaintiff, by making installment payments in the amount of Twenty (\$20.00) dollars per week, commencing one week after service of a certified copy of this order. Upon payment as aforesaid, the said defendant shall be deemed purged of his contempt, but in the event of his failure to pay as directed, said defendant be committed by the Sheriff of the County wherein he may be found in the County Jail of such County to remain retained there until he has paid the fine imposed as aforesaid, together with the costs and the sheriff's legal fees in connection therewith and that a warrant of commitment be issued accordingly without further notice.

Affidavit of Evella Harrell (Annexed).

9. Upon information and belief, when Plaintiff Harrell failed to comply with the Order of Contempt, defendant Juidice issued an ex parte commitment order pursuant to Judiciary Law Article 19, Section 756.

10. On October 2, 1974, deputies of defendant Quinlan went to Plaintiff Harrell's home and arrested him pursuant to the commitment order and committed him to the Dutchess County Jail.

11. On October 2, 1974, Plaintiff Harrell was released from Dutchess County Jail pursuant to Judiciary Law Section 774, after his mother and sister lent him funds to pay the fine totalling \$283.75. This debt has remained unpaid due to his indigency.

12. The sum of \$283.75 was delivered to a deputy of defendant Quinlan, who, upon information and belief, delivered the money to defendant Way pursuant to Section 773 of the Judiciary Law.

13. Upon information and belief, on November 20, 1974, Thomas A. Reed, Attorney for Defendant Way served by mail a subpoena duces tecum, requiring Plaintiff Harrell to appear on December 5, 1974, before a notary public at 75 Market Street, Poughkeepsie, New York, for the taking of a deposition regarding all matters relevant to the satisfaction of the judgment of May 8, 1974, and to produce certain records.

14. Upon information and belief, when Plaintiff Harrell failed to appear on December 5, 1974, Defendant Aldrich issued an Order to Show Cause pursuant to Judiciary Law Article 19, Section 757 (1) ordering Plaintiff Harrell to appear at the Dutchess County Court on December 31, 1974, at 10:00 a.m. to "show cause why he

Affidavit of Evella Harrell (Annexed).

should not be punished as for contempt for violation of and non-compliance with the said subpoena in that he failed to appear or respond pursuant thereto . . ."

15. When Plaintiff Harrell failed to appear on December 31, 1974, the hearing on the Order to Show Cause was adjourned to January 7, 1975, at 10:00 a.m.

16. When Plaintiff Harrell failed to appear in County Court on January 7, 1975, Defendant Juidice issued an Order of Contempt on August 14, 1973, pursuant to Judiciary Law Article 19, Section 770 holding Plaintiff Harrell in contempt and ordering:

ORDERED, that the said defendant Robert Harrell for his misconduct and willful contempt be and he is hereby fined the sum of \$128.98 to be paid to the plaintiff, besides the sum of \$10.00 costs of this proceeding by paying said amount to Reed & Reed, Esqs., attorneys for the Plaintiff, by making installment payments in the amount of Twenty (\$20.00) dollars per week, commencing one week after service of a certified copy of this order. Upon payment as aforesaid, the said defendant shall be deemed purged to his contempt, but in the event of his failure to pay as directed, said defendant be committed by the Sheriff of the County wherein he may be found in the County Jail of such County to remain retained there until he has paid the fine imposed as aforesaid, together with the costs and the sheriff's legal fees in connection therewith and that a warrant of commitment be issued accordingly without further notice.

17. Upon information and belief, Defendant Juidice issued the Order of Contempt based upon the following:

Upon reading and filing the Order to Show Cause dated the 9th day of December, 1974, with due proof

Affidavit of Evella Harrell (Annexed).

of service thereof on the defendant, Robert Harrell, the affirmation of Thomas A. Reed dated the 6th day of December, 1974, and upon all the pleadings and proceedings heretofore had herein, and after hearing Reed & Reed, Esqs., Thomas A. Reed, of counsel, for the plaintiff in support of said motion, and there being no opposition thereto . . .

18. Upon information and belief, when Plaintiff Harrell failed to comply with the Order of Contempt, Defendant Juidice issued an *ex parte* commitment order pursuant to Judiciary Law Article 19, Section 756.

19. Upon information and belief, on February 7, 1975, deputies of defendant Quinlan went to Plaintiff Harrell's job and arrested him pursuant to the commitment order and committed him to the Dutchess County Jail.

20. On February 7, 1975, plaintiff Harrell was released from Dutchess County Jail pursuant to Judiciary Law Section 774 after his brother and sister lent him funds to pay the fine totalling \$156.67. This debt has remained unpaid due to his indigency.

21. The sum of \$156.67 was delivered to a deputy of defendant Quinlan, who, upon information and belief, delivered the money to defendant Way pursuant to Section 773 of the Judiciary Law.

22. At the time of his arrest, plaintiff was working on a part-time basis and had no funds to pay the fine.

23. By virtue of the foregoing, plaintiff Harrell was wrongfully imprisoned on two occasions, for approximately 6 hours, suffered mental anguish, shame and humiliation, damage to his character and reputation, damage to his

Affidavit of Evella Harrell (Annexed).

credit standing, and was wrongfully deprived of \$283.75 on one occasion and \$156.67 on another occasion in violation of his Fifth, Eighth, and Fourteenth Amendment rights to the United States Constitution.

24. Plaintiff Harrell was deprived of his liberty and his property in the amount of the \$283.75 fine plus \$156.67 fine without being brought before the Court prior to incarceration to answer to defendant Way's charges or to plead his indigency in violation of his due process rights under the Fifth, and Fourteenth Amendments to the United States Constitution.

25. At no time during the course of the civil contempt proceedings was the plaintiff Harrell apprised of his right to counsel in these proceedings nor is there any provision pursuant to Article 19 of the Judiciary Law for the appointment of counsel for indigent persons faced with the imminent danger of imprisonment in violation of the Fifth and Fourteenth Amendments to the United States Constitution.

26. Pursuant to the commitment order, plaintiff Harrell was deprived of liberty because of his indigency. This deprivation of liberty constitutes a violation of his rights under the Equal Protection clause of the Fourteenth Amendment to the United States Constitution by subjecting plaintiff Harrell to arrest and imprisonment because of his inability to pay the fine while a person with the ability to pay the fine would not be subject to arrest or imprisonment.

27. Pursuant to the commitment order, plaintiff Harrell was subjected to an indefinite term of imprisonment for the non-payment of a fine that he was financially unable to pay. Because the indefinite term of imprisonment is

Affidavit of Evella Harrell (Annexed).

disproportionate to the alleged offense, it is in violation of the ban of the Eighth Amendment to the United States Constitution on the imposition of cruel and unusual punishments.

28. Evella Harrell prays that this Court:

(1) Enter judgment on behalf of plaintiff Harrell in the amount of \$100,000 for his unlawful imprisonments.

(2) Enter judgment on behalf of plaintiff Harrell in the amount of \$440.42 against defendant Way the recipient of the fine unlawfully imposed in violation of the Fifth, Eighth, and Fourteenth Amendments.

29. I submit this affidavit for Robert Harrell because on February 13, 1975, Robert Harrell left home. I do not know where he went. I do know that he left because of severe depression regarding his inability to support his family.

30. No prior applications for similar relief have been made.

s/ Evella Harrell

(Jurat)

Answer (Defendant Quinlan).

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[S A M E T I T L E]

LAWRENCE M. QUINLAN, defendant herein, by his undersigned counsel, answers the complaint and complaining affidavits herein as follows:

ANSWERING PARAGRAPHS 1-94 OF THE ORIGINAL COMPLAINT

- I. Respectfully refers to the cited sections of the Judiciary Law for the provisions thereof and denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraphs 1, 2 and 3.
- II. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs 4 and 5.
- III. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 6.
- IV. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs 7, 8 and 9.
- V. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs 10 and 11.

Answer (Defendant Quinlan).

- VI. Admits the allegations of paragraphs 12 and 13 of said complaint and denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs 14, 15 and 16.
- VII. A. (1) Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28 and 34.
- (2) Admits the allegations of paragraphs 29, 30, 31, 32 and 33.
- (3) Admits that plaintiff Vail was released from Dutchess County Jail on October 2, 1974 and denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 35.
- (4) Admits that the sum of \$294.25, as entered in the records of defendant Quinlan, included \$250.00 for the amount, \$20.00 for costs, \$7.50 for service fees, \$1.00 for mileage fees, \$13.50 for poundage, \$.25 for an affidavit and \$2.00 for C. & D., and that said sum was delivered to a deputy of defendant Quinlan, and that thereafter the sum of \$280.55 was remitted to defendant Public Loan's attorney, and except as so admitted, denies the remaining allegations of paragraphs 36 and 37.
- (5) Denies that defendant Quinlan acted wrongfully, alleges that his acts were lawful and proper under and in accordance with applicable prevailing law, and denies knowledge or information sufficient to form

Answer (Defendant Quinlan).

a belief as to the truth of the remaining allegations of paragraphs 38, 39, 40, 41 and 42.

- B. (1) Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60 and 61.
- C. (1) Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 81 and 82.
- (2) Admits the allegations of paragraph 73.
- (3) Admits that plaintiff McNair remained in Dutchess County Jail on February 21, 1974 until he paid the sum of \$283.75 (\$250.00, plus \$10.00 costs, \$7.50 service, \$13.00 poundage, \$1.00 mileage, \$.25 affidavit and \$2.00 C. & D.) and except as so admitted, denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 74.
- (4) Admits that the sum of \$283.75 was delivered to a deputy of defendant Quinlan and that thereafter the sum of \$270.75 was remitted to defendant Montgomery's attorney and except as so admitted denies the remaining allegations of paragraph 75.
- (5) Denies that defendant Quinlan acted wrongfully, alleges that his acts were lawful and proper under and in accordance with applicable prevailing law, and denies knowledge or information sufficient to

Answer (Defendant Quinlan).

form a belief as to the truth of the remaining allegations of paragraphs 76, 77, 78, 79 and 80.

- VIII. Restates and realleges all of the above in answer to paragraph 83, respectfully refers to the cited Amendments to the Constitution and Article of the Judiciary Law for the provisions thereof and denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraphs 84 and 85.
- IX. Restates and realleges all of the above in answer to paragraph 86, respectfully refers to the cited Amendment to the Constitution and Article of the Judiciary Law for the provisions thereof and denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraphs 87 and 88.
- X. Restates and realleges all of the above in answer to paragraph 89, respectfully refers to the cited Amendment to the Constitution and Article of the Judiciary Law for the provisions thereof and denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraphs 90 and 91.
- XI. Restates and realleges all of the above in answer to paragraph 92, respectfully refers to the cited Amendment to the Constitution and Article of the Judiciary Law for the provisions thereof and denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraphs 93 and 94.

Answer (Defendant Quinlan).

ANSWERING THE COMPLAINING AFFIDAVITS OF PLAINTIFF LESLIE NAMETH

XII. A. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 1 through 16, inclusive, of the affidavit sworn to January 7, 1975.

B. With respect to the affidavit sworn to February 11, 1975:

- (1) Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs 3, 5, 10, 11, 12 and 13.
- (2) Admits the allegations of paragraphs 4, 6, 7 and 8.
- (3) Admits that, according to defendant Quinlan's records, at 1:55 P. M. deputies took him before Hon. Joseph Juidice, Dutchess County Court, and he was released in Court, and except as so admitted, denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 9.

ANSWERING THE COMPLAINING AFFIDAVITS OF PLAINTIFF MCKINLEY HUMES

XIII. A. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs 1 through 19, inclusive, of the affidavit sworn to January 8, 1975.

B. With respect to the affidavit sworn to February 11, 1975:

Answer (Defendant Quinlan).

- (1) Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs 3, 5, 8, 9, 12, 13 and 14.
- (2) Admits the allegations of paragraphs 4, 6, 7 and 10.
- (3) Admits that, according to defendant Quinlan's records, at 1:55 P. M. deputies took him before Hon. Joseph Juidice, Dutchess County Court, and he was released in Court, and except as so admitted, denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 11.

ANSWERING THE COMPLAINING AFFIDAVIT OF JOSEPH RABASCO

XIV. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs 1 through 15, inclusive, of the affidavit sworn to January 8, 1975.

ANSWERING THE COMPLAINING AFFIDAVIT OF PLAINTIFF JOANNE HARVARD

XV. With respect to the affidavit sworn to January 8, 1975:

- (1) Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs 1 through 10 and 16 through 28, thereof.
- (2) Admits the allegations of paragraphs 11 and 12.

Answer (Defendant Quinlan).

- (3) Admits that plaintiff Harvard was released from Dutchess County Jail on November 21, 1974 upon payment of the sum of \$214.24 and denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 13.
- (4) Admits that the sum of \$294.25 was delivered to a deputy of defendant Quinlan and that thereafter the sum of \$278.25 was remitted to defendant Domestic Finance's attorney, and except as so admitted, denies the remaining allegations of paragraph 14.
- (5) Denies the defendant Quinlan acted wrongfully, alleges that his acts were lawful and proper under and in accordance with applicable prevailing law, and denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 15 thereof.

ANSWERING THE COMPLAINING AFFIDAVIT OF PLAINTIFF JAMES HURRY

- XVI. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs 1 through 23, inclusive, of the affidavit sworn to December 31, 1974.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

- XVII. Plaintiffs fail to state a cause of action upon which relief may be granted to plaintiffs against defendant Quinlan.

Answer (Defendant Quinlan).

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

- XVIII. Defendant Quinlan's actions were without malice, in law or in fact, to any of the plaintiffs, were taken and carried out in the actual and good faith belief that they were his obligations and responsibilities under the law of the State of New York, and were in fact and in law his obligations and responsibilities under the law of the State of New York.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

- XIX. Plaintiffs are estopped from seeking, and may not in law or equity seek damages from defendant Quinlan on account of the actions defendant Quinlan was required by law to take because of plaintiffs' deliberate election to disregard and disobey the prior orders of the Courts of New York.

WHEREFORE on behalf of defendant Lawrence M. Quinlan, individually and in his capacity as Sheriff of Dutchess County, it is respectfully prayed that the prayers for damages against him for unlawful imprisonment be dismissed, that the complaints against him be dismissed in all respects, and that he have such further relief as shall be just, proper and equitable.

CHARLES F. McMORROW, Esq.
Attorney for Defendant Quinlan

BY S/
JOEL T. CAMCHE, Esq.,
Of Counsel
500 Fifth Avenue
New York, N. Y. 10036
(212) 565-5431

Answer (Herbert H. Redl).**UNITED STATES DISTRICT COURT**

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

Defendant, Herbert H. Redl, d/b/a H. H. Redl's Auto Body Works, by its attorneys, Reed & Reed, answers the complaint and complaining affidavits herein as follows:

1. Respectfully refers to the enumerated sections of the New York State Judiciary Law and the United States Constitution, and as amended, for the provisions thereof and otherwise denies knowledge or information sufficient to form a belief as to the truth of the remaining paragraphs of the complaint Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 15, and Nos. 17 through 82 inclusive.

2. Admits the allegations contained in the paragraphs of the complaint Nos. 12, 13, and 16.

3. Repeats and realleges all of the above in answer to paragraph 83 of the complaint.

4. Admits the allegations contained in the paragraph of the complaint No. 84.

5. Denies the allegations contained in the paragraph of the complaint No. 85.

6. Repeats and realleges all of the above in answer to paragraph No. 86 of the complaint.

7. Admits the allegations contained in the paragraph of the complaint No. 87.

Answer (Herbert H. Redl).

8. Denies the allegations contained in the paragraph of the complaint No. 88.

9. Repeats and realleges all of the above in answer to paragraph No. 89 of the complaint.

10. Admits the allegations contained in the paragraph of the complaint No. 90.

11. Denies the allegations contained in the paragraph of the complaint No. 91.

12. Repeats and realleges all of the above in answer to paragraph No. 92 of the complaint.

13. Admits the allegations contained in the paragraph of the complaint No. 93.

14. Denies the allegation contained in the paragraph of the complaint No. 94.

**ANSWERING THE COMPLAINING AFFIDAVIT OF PLAINTIFF
LESLIE NAMETH**

15. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs Nos. 2, 11, and 16 of the affidavit sworn to January 7, 1975.

16. Admits the allegations contained in the paragraphs of the affidavit sworn to January 7, 1975, Nos. 3 through 10 inclusive.

17. Denies the allegations contained in the paragraphs of the affidavit sworn to January 7, 1975, Nos. 12, 13, 14 and 15.

Answer (Herbert H. Redl).

ANSWERING THE COMPLAINING AMENDED AFFIDAVIT OF
PLAINTIFF LESLIE NAMETH

18. Repeats and realleges all of the above in answer to paragraph No. 1 of the affidavit sworn to February 11, 1975.

19. Admits the allegations contained in the paragraphs of the affidavit sworn to February 11, 1975, No. 2.

20. Denies knowledge or information sufficient to form a belief as to the truth of allegations contained in paragraph No. 3 of the affidavit sworn to February 11, 1975, except admits a copy of the Order to Show Cause of January 8, 1975, was served on the attorneys for Herbert H. Redl.

21. Denies knowledge or information sufficient to form a belief as to the truth of allegations contained in paragraphs 4 through 11 inclusive and No. 13 of the affidavit sworn to February 11, 1975.

22. Denies the allegations contained in paragraph No. 12 of the affidavit sworn to February 11, 1975.

FOR A FIRST AFFIRMATIVE DEFENSE

23. The complaint and complaining affidavits of the plaintiff Leslie Nameth fail to state a claim or cause of action as against defendant Herbert H. Redl, d/b/a H. H. Redl's Auto Body Works, upon which relief can be granted.

FOR A SECOND AFFIRMATIVE DEFENSE

24. The Court lacks subject matter jurisdiction as to the defendant Herbert H. Redl, d/b/a H. H. Redl's Auto Body Works, in that the said defendant did no act or acts involving the arrest or imprisonment of the plaintiff Leslie

Answer (Herbert H. Redl).

Nameth or otherwise do anything violative of the rights of said plaintiff and the said plaintiff could not have been damaged by said defendant and, therefore, the Court lacks subject matter jurisdiction.

FOR A THIRD AFFIRMATIVE DEFENSE

25. Defendant Herbert H. Redl, d/b/a H. H. Redl's Auto Body Works, by and through his attorneys, proceeded to collect a debt justly due him, strictly in accordance with the law and statutes of the State of New York provided therefore, and said defendant did no act or acts violative of the rights of the plaintiff Leslie Nameth and, therefore, could not have damaged the said plaintiff and the complaint and the affidavits should be dismissed.

WHEREFORE, defendant Herbert H. Redl, d/b/a H. H. Redl's Auto Body Works, demands judgment against plaintiff Leslie Nameth, dismissing the complaint and dismissing the demand and prayer for damages against said defendant, together with the costs and disbursements of this action, and for such other and further relief as to this Court may be just and proper.

Dated: Poughkeepsie, New York
March 18, 1975

REED & REED
by THOMAS A. REED
Thomas A. Reed

Attorneys for Defendant
Herbert H. Redl
d/b/a H. H. Redl's Auto Body Works,
75 Market Street
Poughkeepsie, New York 12601
Tel. (914) 454-4340

Answer (Public Loan Company).

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

Defendant, Public Loan Company Inc., by its attorneys Golenbock and Barell for its answer to the complaint herein, alleges upon information and belief as follows:

FIRST: Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs Nos. "1", "2", "3", "7", "8", "9", "10", "11", "12", "13", "15", "16", "18", "19", "20", "21", "22", "23", "24", "25", "26", "27", "29", "30", "31", "32", "33", "34", "35", "36", and "37".

SECOND: Admits the allegations contained in paragraphs Nos. "14", "84", "87", "90" and "93" of the complaint herein.

THIRD: In response to the allegations contained in Paragraph "17", admits entering into an agreement with plaintiff Vail and begs leave to refer to same for the precise terms and contents thereof.

FOURTH: Denies the allegations contained in paragraphs Nos. "4", "5", "6", "28", "38", "39", "40", "41", "42", "85", "88", "91" and "94" of the complaint herein.

FIFTH: Denies any knowledge or information sufficient to form a belief as to the truth of the allegations in the complaint set forth on behalf of plaintiffs other than plaintiff Vail and contained in paragraphs Nos. 43 through 82 inclusive.

Answer (Public Loan Company).

FIRST AFFIRMATIVE DEFENSE

SIXTH: The complaint fails to state a claim as against defendant Public Loan Company, Inc., upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

SEVENTH: Defendant Public Loan Company, Inc., through its attorney, proceed strictly in accordance with valid and existing laws of the State of New York, and the rights and obligations provided for thereunder.

THIRD AFFIRMATIVE DEFENSE

EIGHTH: Defendant Public Loan Company, Inc., lawfully attempted to collect a debt due and owing to it; if any harm was in fact suffered by plaintiff, Vail, it was in no way caused or brought about by defendant Public Loan Company, Inc.

WHEREFORE, defendant Public Loan Company, Inc., demands judgment against plaintiffs dismissing the complaint herein, together with the costs and disbursements of this action, and such other and further relief which the Court deems just and proper.

Dated: New York, New York

By s/ ARTHUR SILVERMAN
A Member of the Firm

GOLENBOCK AND BARELL
Attorneys for Defendant
Public Loan Company, Inc.
60 East 42nd Street
New York, New York 10017
Tel. (212) 986-3300

Answer (George Montgomery, M.D.).

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

74 Civ. 4773 JMC

HARRY VAIL, JR., PATRICK WARD, and RICHARD MCNAIR, on
behalf of themselves and all other persons similarly
situated,

Plaintiffs,

—against—

LAWRENCE M. QUINLAN, individually and in his capacity as
Sheriff of Dutchess County, JOSEPH JUIDICE, individually
and in his capacity as a Judge of the Dutchess County
Court, RAYMOND E. ALDRICH, JR., individually and in his
capacity as Judge of the Dutchess County Court, and
PUBLIC LOAN COMPANY, INC., ARNOLD GORAN, M.D., P.C.,
and GEORGE MONTGOMERY, JR., M.D.,

Defendants.

George Montgomery, Jr., M.D., named as defendant in
the above action, through his attorneys, Garrity & Dietz,
Esqs., answering the Complaint herein, respectfully shows
and alleges:

1. Denies knowledge or information sufficient to form
belief as to each and every allegation of the Paragraphs
of the Complaint herein designated as "7", "8", "9", "10",
and "11".

2. Denies each and every allegation of the Paragraph
of the Complaint herein designated as "62" except admits
that the defendant, George Montgomery, Jr., M.D., as an

Answer (George Montgomery, M.D.).

employee of Dr. George W. T. Way, M.D., rendered certain
medical services to one, Virginia McNair, for which a
charge of \$318.42 was made by the said Dr. Way.

3. Denies knowledge or information sufficient to form a
belief as to each and every allegation contained in the Para-
graphs of the Complaint herein designated as "63" to "82",
inclusive.

4. Denies each and every allegation contained in the
Paragraph of the Complaint herein designated as "85",
"88", "91", and "94".

WHEREFORE, defendant respectfully prays that the above
entitled action be dismissed as against him, together with
the costs of this action.

Dated: February 26, 1975, at
Poughkeepsie, New York

Yours, etc.,

GARRITY & DIETZ, ESQS.

By: s/ John B. Garrity
John B. Garrity, Attorneys for
Defendant, GEORGE MONTGOMERY, JR.,
M.D.
Office & P.O. Address
59 Academy Street
P. O. Box 5250
Poughkeepsie, New York 12601
Tele: (914) 471-4220

164a

**Notice of Motion to Dismiss (State
Judicial Defendants),**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[S A M E T I T L E]

SIRS:

PLEASE TAKE NOTICE that upon the memorandum of law to be submitted in accordance with the scheduling order of the three-judge court, the undersigned will move this Court on the 4th day of April, 1975, in Room , United States Courthouse, Foley Square, New York, New York at 11:30 o'clock in the forenoon or as soon thereafter as counsel may be heard for an order dismissing the complaint pursuant to the Federal Rules of Civil Procedure, Rule 12(b)(1) and (6), for lack of subject matter jurisdiction, failure to state facts sufficient to constitute a cause of action, res judicata and collateral estoppel, full faith and credit clause of the United States Constitution, and comity between the federal and state courts and for such other and further relief as may be just and proper.

Dated: New York, New York
March 12, 1975

Yours, etc.,

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
*Attorney for Defendants, Judges
Judice and Aldrich*

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*Notice of Motion to Dismiss (State
Judicial Defendants).*

By
s/
A. SETH GREENWALD
Assistant Attorney General
Office & P.O. Address
Two World Trade Center
New York, New York 10047
Tel. (212) 488-3396

**Opinion (and Order) of Three-Judge Court
(Reproduced at Jurisdictional Statement 1a).**

**Class Action Memorandum (Reproduced at
Jurisdictional Statement 17a).**

Order to Show Cause (January 14, 1976).

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

Upon the annexed affidavit of A. Seth Greenwald, sworn to January 12, 1976, and upon the order of the Court docketed January 7, 1976 and all prior proceedings, let the plaintiffs show cause before this Court at the United States Courthouse, Foley Square, Room 2704, New York, New York, on January 15, 1976 at 2:15 P.M. why an order should not be entered;

Staying the order of the Court for 60 days or until further order of the Supreme Court of the United States, and upon such terms as may be just and proper;

Amending the order of the Court, pursuant to F.R.C.P. Rule 59, and

IT IS ORDERED that telephonic notice of this order to show cause together with the papers upon which it is based be made by day of January, 1976, be deemed sufficient.

Dated: New York, New York
January 14, 1976

s/ L. M. M.
U.S.D.J.

Affidavit of A. Seth Greenwald (Annexed).

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

A. Seth Greenwald, being duly sworn, deposes and says:

I am an Assistant Attorney General in the office of Louis J. Lefkowitz, Attorney General of the State of New York, attorney for defendants Juidice and Aldrich, and pro se pursuant to New York Executive Law § 71. I make this affidavit in support of the relief requested in the order to show cause as elaborated herein.

On January 7, 1976 this Court entered an order which declared unconstitutional and enjoined *in toto* Judiciary Law §§ 756, 757, 770, 727, 773, 774 and 775. This is a substantial portion of Article 19 of the Judiciary Law which deals with contempts; in particular the invalidated sections relate to the procedure in New York State courts to punish and provide sanctions for civil contempts. As a consequence, at the present time there is no statute in New York which even provides a procedure to punish a person for civil contempt. The present situation is exemplified by the directive of the Sheriff of the City of New York, New York Law Journal, January 12, 1976, p. 1 (Exhibit "A" annexed).

Unless some relief from the order is provided there appears to be no way the courts of the State of New York can provide sanctions for civil contempts. While the Legislature can act this can take time and in view of the con-

Affidavit of A. Seth Greenwald (Annexed).

tinuing fiscal crisis, the drafting of a new Judiciary Law Art. 19 is not a top priority.

In the circumstances, at the very least the statutes invalidated should be allowed to operate if the deficiencies noted by this Court are remedied, by statute or court order. Thus at p. 10 of this Court's opinion the plaintiffs alleged four independent points of lack of due process. The Court accepted all. As a consequence the order declaring the several statutes unconstitutional should be modified to allow use of same if:

(1) The adjudication of contempt and order of imprisonment follows a hearing wherein the respondent is present;

(2) The order or warrant of attachment under Judiciary Law § 757 must contain clear warning that the respondent may be subject to imprisonment;

(3) That at the hearing on contempt the respondent be advised of his right to assigned counsel if indigent; and

(4) That any fine or imprisonment imposed be coercive and not punitive, based on ability to comply.

It should be noted that in a similar situation, *Sugar v. Curtis Circulation Co.*, 74 Civ. 78,383 F. Supp. 643, (S.D.N.Y.), invalidating the attachment statute, CPLR Article 62, the judgment entered provided that the statute involved was enjoined "until and unless a meaningful opportunity to vacate an attachment is provided under CPLR 6223 or by the Courts of the State of New York . . . (Jurisd. Statement, 32a). The quoted portion covered the objection of the three-judge court in *Sugar*. Further the Court stay the judgment pending an appeal to the Supreme Court.*

* The appeal has since been accepted for hearing by the Supreme Court and will be argued January 20, 1976, *sub nom. Carey v. Sugar*.

Affidavit of A. Seth Greenwald (Annexed).

The resettling of the order is necessary since the invalidated sections were not found unconstitutional for what they provided, but rather what they did not provide and what the Court held was the State court's application of same. These objections can be cured by the suggested conditions. It is not necessary or judicious to totally eliminate the statutes.

It is also emphasized that this Court entered a final order and injunction against the operation of the cited statutes. However the plaintiffs were moving for a preliminary injunction and the defendants were moving to dismiss. Neither the Attorney General nor his clients had put in an answer. The plaintiffs had not requested, at this point, final relief so far as I know. Certainly the indigency of the plaintiffs was at issue and there was no claim that the facts were undisputed.

Without a trial final relief seems unwarranted and unjustified. While this Court saw Mr. Vail as "typical", Opinion p. 8, and assumed as a fact his indigency this was not proven. Actually the defendants cited the lack of indigency of several plaintiffs (James Hurry and Leslie Nameth—Att. Gen. Br. pp. 3 and 4) based on their own allegations. Certainly there was no motion or record on which to base a final judgment.

Obviously, this Court would grant plaintiffs' motion but that was for a preliminary judgment, not a final order.

In any event, justice can be done and New York left with a civil contempt statute if the relief requested is granted. Otherwise much confusion will result in the months ahead if recalcitrant judgment debtors and others cannot be brought before the bar of justice.

WHEREFORE, your deponent respectfully requests that the relief from the order be granted.

s/ A. SETH GREENWALD

(Jurat)

Affidavit of A. Seth Greenwald (Annexed).

Exhibit "A".

New York Law Journal, p. 1

NEW YORK, MONDAY, JANUARY 12, 1976

Action Follows Voiding of State Statutes

*Sheriff to Halt Efforts to Jail
Husbands Who Owe Alimony*
By Alan Kohn

As the result of a federal court ruling, the city Sheriff's Office no longer will enforce civil contempt orders jailing husbands who are in arrears in alimony and support payments.

The office's counsel, Paul Weinstein, said this was one of the effects of a ruling last week by a three-judge federal constitutional court that invalidated seven New York State statutes dealing with the jailing of debtors for civil contempt.

Federal Ruling

The court in *Vail v. Quinlan*, *Law Journal Jan. 8*, enjoined statutes that allow a judgment debtor who has failed to comply with a disclosure subpoena concerning his ability to satisfy the debt to be held in contempt, fined and imprisoned without a hearing.

"Noting the opinion of the . . . court," said Mr. Weinstein, ". . . the sheriff . . . hereby notifies the . . . bar that effective immediately, he is prohibited from acting on or executing any arrest order, warrant or commitment for civil contempt.

"The sole exception to the statement is an arrest pursuant to CPLR 6101.1."

CPLR 6101.1 authorizes a prejudgement order of arrest where a judge finds an alleged debtor guilty of fraud, con-

Affidavit of A. Seth Greenwald (Annexed).

version or deceit. The sheriff must bring the person before the court within forty-eight hours. Women are exempted from the provision.

Criminal Contempt

"With regard to incarceration for criminal contempt," Mr. Weinstein said, "the sheriff may act upon and execute such orders. The sections of the Judiciary Law which govern commitment for criminal contempt . . . 750, 751 and 752, were not passed on by the court and therefore remain valid.

"Therefore, it is the determination of this office that without a stay of the court's decision or an appeal . . . or legislative action, the sheriff may arrest and incarcerate upon process or a pre-judgment order based upon conversion, fraud or deceit. Females would not be subject to arrest for civil contempt."

A spokesman for the office of Attorney General Louis J. Lefkowitz said the state was studying whether to appeal. Ordinarily in such cases, he said, the court seeks a stay or some form of interim relief. The state has until next Monday to decide.

Arrears Problem

Mr. Weinstein explained that most orders holding a husband in civil contempt for failure to pay alimony and support come from Section 245 of the Domestic Relations Law. The section becomes operative through sections of Article 19 of the Judiciary Law that the court declared unconstitutional.

He also noted that Section 23 of the state Civil Rights Law prohibits the arrest of anyone in a civil proceeding unless it is done according to a statute.

Supplemental Affidavit of A. Seth Greenwald.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

 [SAME TITLE]

 STATE OF NEW YORK }
 COUNTY OF NEW YORK } ss.:

A. SETH GREENWALD, being duly sworn, deposes and says:

I am an Assistant Attorney General in the office of Louis J. Lefkowitz, Attorney General of the State of New York, attorney for defendants Juicide and Alrich and pro se pursuant to Executive Law § 71. I make this Supplemental Affidavit in support of the pending resettling of the order based on the order to show cause signed January 14, 1976, and the argument before the three-judge court on January 17, 1976.

I wish to invite the Court's attention to *Agur v. Wilson*, 498 F.2d 961 (2d Cir. 1974), cert. denied 419 U.S. 1972, reh. den. 420 U.S. 939. In this case the Second Circuit held that there was no substantial constitutional question involved in a challenge to, *inter alia*, N.Y. Judiciary Law §§ 770, 772, 774, subd. 1. While the Circuit did not consider specifically all the invalidated sections in the instant case, I submit that the decision is controlling on this Court, which is still a District Court sitting in the Second Circuit.

While, as in any case, the fact of *Agur* are different from the instant case, the civil contempt process is the same. Most significantly, where a litigant has failed to present his claim of indigency to the state court or refuses to attend the hearing, he can be incarcerated for civil contempt; *Agur*, *supra* at 965-966.

Supplemental Affidavit of A. Seth Greenwald.

At the very least, *Agur* indicates a substantial chance of success by appellants on appeal and warrants a stay of the order by this Court pending an appeal to the United States Supreme Court. I would suggest eliminating the "for sixty days" in the second line, last paragraph on page 2 of my proposed order and adding to the bar on imprisonment—"in the interim", in the last line, last paragraph, second page, the proviso, "if not represented by counsel unless the subpoena or order to show cause contains adequate warning that failure to appear for the subpoena or hearing may result in your imprisonment."

It is submitted that the *Agur* decision warrants a stay in the manner requested. It should also be noted that Circuit Judge Lumbard was a member of the panel in *Agur v. Wilson*, *supra*.

Further it is suggested that the Court consider the opinion rendered herein in light of *Agur v. Wilson*, *supra*.

WHEREFORE, your deponent respectfully requests that defendants' order be signed with the further modification as indicated herein, and take such other and further action as may be just and proper in the circumstances.

s/ A. SETH GREENWALD

(JURAT)

**Order (Appealed From) (Reproduced at
Jurisdictional Statement 19a).**

**Notice of Appeal (Reproduced at Jurisdictional
Statement 21a).**

**Order Granting Stay (Justice Marshall) (Reproduced
at Jurisdictional Statement 23a).**